

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

**BLUE CROSS BLUE SHIELD
HEALTHCARE PLAN OF
GEORGIA, INC.**

Plaintiff

v.

**HALOMD, INC.; HOSPITALIST
MEDICINE PHYSICIANS OF
GEORGIA - TCG, PC; and SOUND
PHYSICIANS EMERGENCY
MEDICINE OF GEORGIA, PC**

Defendants

CASE NO. 1:25-CV-02919-TWT

**REPLY IN SUPPORT OF
SOUND PHYSICIANS' MOTION TO DISMISS**

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I. INTRODUCTION

On November 19, 2025, after the opening and opposition briefs in this case, the Eleventh Circuit issued a published opinion that forecloses arguments that Blue Cross¹ makes and relies on here. *See Reach Air Medical Services LLC v. Kaiser Foundation Health Plan Inc.*, No. 24-10135 (11th Cir. Nov. 19, 2025) (“RAMS”).² The holding in *RAMS* has three direct implications for this case. **First**, it makes clear that Rule 9(b) applies to fraud-based challenges to IDR rulings, like this case – and offers no basis to waive Rule 9(b) as Blue Cross proposes. **Second**, it makes clear that the four standards in 9 U.S.C. § 10(a)(1)-(4) are the only grounds to challenge an IDR ruling. **Third**, it describes the standards for fraud (§ 10(a)(1)) and arbitrator-authority (§ 10(a)(4)) challenges to IDR rulings, and its explanation of these tests confirms that Blue Cross’s complaint flunks both. In short, this precedent requires dismissal here.

The Court should also consider the implications of the rule that Blue Cross proposes, and reject it. There have been thousands of IDR arbitrations between Blue Cross and Sound Physicians. AC ¶¶ 2, 8, 72, 90, 112. Of these thousands, Blue Cross’s complaint identifies six IDRs where it says the arbitrator (known as an IDRE) made the wrong decision on eligibility, and Blue Cross “estimates” (Opp.

¹ This reply uses the same defined terms as Sound Physicians’ opening brief. “Opp.” citations refer to Blue Cross’s opposition brief, Docket No. 50.

² The slip opinion is attached as *Exhibit 1* to this brief.

12) that more were wrong. From this alone, Blue Cross argues that it can sue and conduct discovery about *all* of these thousands of unidentified arbitrations (it does not even list them) and re-litigate all of them under RICO.

This cannot be the law, and as the Eleventh Circuit just confirmed, it isn't. It would mean that the losing party to any IDR could re-litigate the dispute in court by alleging that the other side's submissions contained incorrect statements. Blue Cross's theory violates the NSA's express limits on judicial review. It violates the FAA, which does not permit relitigating arbitration merely because one side disagrees with the arbitrator's ruling or calls the other side's argument 'fraud.' It violates Rule 9(b), which requires fraud claims to be pleaded with particularity. And it violates common sense, because six supposed errors among thousands of cases do not show or suggest fraud. The Court should dismiss this case.

II. ARGUMENT

A. Blue Cross's arguments are premised on contradictions and errors.

In responding to motions to dismiss, plaintiffs often object that the defendant is not accepting the facts in the complaint as true, as required. But here, the reverse has occurred: the plaintiff contradicts the facts pleaded in its own complaint. Blue Cross is likewise mistaken on the governing law and regulations that apply to IDR.

Blue Cross loses under the law that Congress enacted. Thus, it attempts to describe a different process than the one Congress created, and even a different set

of facts than the ones it has pleaded. For the reasons below, none of Blue Cross's arguments are grounds for this case to continue.

1. IDR is arbitration.

Blue Cross now argues that IDR is not arbitration. Opp. 46. But its complaint describes IDR as arbitration six times. AC ¶¶ 4, 66, 97, 111, 261, p. 77. Federal regulations and guidance likewise describe IDR as arbitration and require IDREs to have arbitration expertise, training, and the capacity to fulfill their duties. *See, e.g.*, 45 C.F.R. §§ 149.510(c)(1)(iv), (e)(2)(i), (e)(2)(iii) (Oct. 7, 2021); IDRE Application Form, CMS.GOV, available at <https://perma.cc/X963-L24Y> (accessed November 14, 2025). Legislative history confirms the same. *See* H.R. REP. 116-615, pt. 1, at 56 (2020) (explaining that the IDR process is “also referred to as arbitration” and uses “a third-party arbitrator”).

The Eleventh Circuit agrees that IDR is arbitration: the opinion in *RAMS* expressly describes IDR as arbitration nearly a dozen times. *See RAMS*, slip op. at 1 *et seq.*

Most importantly, Congress says that IDR is arbitration—in particular, it prescribes that the Federal Arbitration Act rules apply. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Regardless how Blue Cross describes IDR now, the plain language of the statute bars judicial review unless Blue Cross satisfies the standards in the FAA.

Blue Cross also objects that it is “impossible to know whether an IDRE

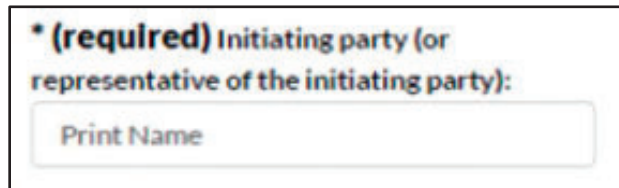
considered” anything beyond the Defendants’ attestations; that there were no written explanations of the rulings on eligibility; and “there is no indication that the arbitrators had all the material information before them and actually addressed the disputed misrepresentation.” Opp. 2, 8, 29 (internal quotations omitted). This argument is foreclosed under *RAMS*, which notes that “an arbitrator’s actual reasoning is of such little importance to our review that it need not be explained—the decision itself is enough.” *RAMS*, at 13 (quoting *Gherardi v. Citigroup Glob. Mkts. Inc.*, 975 F.3d 1232, 1237 (11th Cir. 2020)). Blue Cross similarly objects that “[t]he IDREs did not issue written eligibility decisions.” Opp. 29. But as the Eleventh Circuit has recognized, arbitrators “are not required to include explanations, much less detailed ones, and they often do not.” *Wiregrass Metal Trades Council AFL-CIO v. Shaw Env’t & Infrastructure, Inc.*, 837 F.3d 1083, 1090 (11th Cir. 2016).

Congress wanted, and designed, an efficient and abbreviated process for these numerous disputes. *RAMS*, at 11 (“Congress designed the IDR process to create an efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs” (quotations omitted)). The text of the NSA makes clear that Congress did not want litigation, discovery, and trial in federal court. Blue Cross’s lawsuit turns that on its head. In any event, if Blue Cross wants a different process, its remedy lies with Congress, not the courts. *See Norelus v. Denny’s, Inc.*, 628 F.3d 1270, 1300-01 (11th Cir. 2010) (“Courts may not rewrite the

language of a statute in the guise of interpreting it in order to further what they deem to be a better policy than the one Congress wrote into the statute); *Guardian Flight L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025) (discussing the NSA’s structure and noting, “the wisdom of Congress’s policy choice is beyond our judicial ken”).

2. IDR is not initiated anonymously.

Blue Cross’s brief represents that “IDR is initiated anonymously.” Opp. 44. But its complaint directly contradicts this, and includes a screenshot of the government’s IDR form showing that the initiating party must identify itself:



AC ¶ 55. It also links (*id.* ¶¶ 43, 79) to this government form:

8. ATTESTATION:

___ I, the undersigned initiating party (or representative of the initiating party), attests that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Initiating Party (or Representative of the Initiating Party): _____

Print Name: _____ **Date:** _____

Available at <https://perma.cc/BY4U-KSBW> (accessed November 14, 2025).

Again, this matters because IDR *is* arbitration, and Congress has set out the rules that apply. Blue Cross’s misstatement of these basic procedural facts is not grounds to waive the rules in the FAA.

3. IDREs are certified by the government, and Blue Cross's argument about financial incentives is groundless.

Blue Cross claims that IDREs “are not neutral parties when evaluating eligibility,” Opp. 44, and suggests they are compromised because they “are not paid unless they determine that the dispute is eligible for IDR.” Opp. 8. This is rhetoric, not legal argument, and we note that Blue Cross does not seek vacatur under 9 U.S.C. § 10(a)(2) (“evident partiality or corruption in the arbitrators”).

Every arbitrator, adjudicating any matter, is compensated for their time, and thus under Blue Cross's theory, every arbitrator is biased against every defendant (who would prefer to dismiss the case early). This is, of course, not the law. And Congress built safeguards into the NSA to ensure the integrity of the process. Regulators must ensure that the IDR entity selected to adjudicate a dispute is free from any conflict of interest with the parties. 42 U.S.C. § 300gg-111(c)(4)(F)(i)(III). IDREs must also show expertise in arbitration, claims administration, managed care, billing and coding, and health care law, as well as adequate staffing and fiscal integrity. 42 U.S.C. § 300gg-111(c)(4)(A); 45 C.F.R. § 149.510(e)(2)(i)-(iii), (vi).

Nor is there merit to Blue Cross's dismissive reference to IDREs as “faceless private companies.” Opp. 35. It is not clear what it means for a company to have a face, but the IDREs are identified on CMS's website: <https://perma.cc/PP9W-ML99> (accessed November 14, 2025).

Blue Cross is left with rhetoric because its legal arguments fail. Again,

regardless how Blue Cross characterizes the process, the limits and procedures that Congress established must control.

4. By law, IDREs review and determine whether a claim is eligible for IDR – it is not an “honor system.”

In direct conflict with its own pleadings and with government regulations, Blue Cross asserts that “[t]here is no verification process” for ensuring eligibility (Opp. 2) and that arbitrators are not required to “decide disputes over IDR eligibility.” *Id.* at 23. It calls this an “honor system.” *Id.* at 1, 5.

This is false. Blue Cross’s Amended Complaint and even other parts of its brief acknowledge that IDREs are not only authorized but *required* to assess and rule on eligibility. *See, e.g.*, AC ¶¶ 64, 100; Opp. 8, 36; *see also* 42 U.S.C. § 300gg-112(b)(5)(D); 45 C.F.R. § 149.510(c)(1)(v). Blue Cross also claims it has “no meaningful opportunity” to contest eligibility. Opp. 12. This too is inaccurate and contradictory. As Blue Cross pleads, it made submissions objecting to eligibility in the IDR disputes it now challenges. *E.g.*, AC ¶¶ 99, 102, 139, 159, 175. That it lost does not mean that it had no opportunity to be heard. Tellingly, Blue Cross does not allege that IDREs always make the wrong decision on eligibility, just that Blue Cross “estimates” that “over half” of these decisions were errors. Opp. 12.

B. Congress provided that IDR “shall not be subject to judicial review” except under the FAA, and Blue Cross’s claim fails under the FAA.

It is the law in the Eleventh Circuit that “judicial review of IDR awards is limited to the grounds available under the FAA . . . and cannot be expanded to

include circumstances where facts may be misrepresented to the IDR arbitrator.” *RAMS*, at 6. Or as the Fifth Circuit likewise confirmed, the “NSA expressly bars judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA.” *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th at 275 (original emphasis).³ This is fatal to all the non-vacatur counts. And Blue Cross’s vacatur count likewise fails the FAA requirements for vacatur.

1. There are no grounds for vacatur.

Blue Cross relies on only two of the four possible grounds for vacatur: allegations of fraud and that the arbitrators exceeded their powers.⁴ But both fail under Eleventh Circuit precedent.

As to fraud: a party seeking vacatur of an IDR must establish fraud “by clear and convincing evidence,” and the fraud “must not have been discoverable upon the exercise of due diligence prior to or during the arbitration.” *RAMS*, at 15.

³ Blue Cross claims that Defendants “misrepresent *Guardian Flight* as holding that ‘[t]he exclusive means to challenge an IDR award is to seek vacatur under the FAA.’” Opp. 27 n.6. But Blue Cross misunderstands that two ‘*Guardian Flight*’ cases were decided on the same day. The decision cited by Sound Physicians (Docket No. 45-1, at 24) indeed holds that if parties wish to seek vacatur of IDR awards, “they must do so through the FAA paragraphs explicitly incorporated for that purpose.” *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 620 (5th Cir. 2025) (citing 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II)).

⁴ The complaint also references “undue means.” AC ¶ 252. The opening brief explained why this test is not met (pp. 32-33). Blue Cross has abandoned this theory by ignoring it completely in its opposition, which makes no reference to undue means.

Likewise, “the heightened pleading standards of Rule 9(b) apply” to challenges to IDR rulings based on alleged fraud. *Id.* at 16. This requires details such as “the time and place of each statement and the person responsible for making them.” *Id.* at 18 (alterations omitted).

Blue Cross has not adequately pleaded fraud, let alone by clear and convincing evidence. The opening brief illustrated these defects, which Blue Cross has not rebutted. Most of all, Blue Cross failed to establish that the alleged fraud was not “discoverable upon the exercise of due diligence prior to or during the arbitration.” *NuVasive, Inc. v. Absolute Med. LLC*, 71 F.4th 861, 878 (11th Cir. 2023). **In fact, it pleads the opposite. Blue Cross alleges that it “object[ed] to eligibility in the IDR disputes” in question.** Opp. 29; accord AC ¶¶ 87, 99, 102, 139, 159, 175. That admission shows both Blue Cross and the arbitrators knew the very issues it now calls fraudulent. That Blue Cross identified the issue, presented it to the arbitrator, and lost bars further review here. Any contrary argument is foreclosed by circuit precedent. *See RAMS*, at 15.

As to the arbitrators’ authority: Blue Cross misunderstands the test for vacatur where arbitrators exceed their power. Blue Cross argues that the arbitrators exceeded their powers by ordering it to pay for medical care after incorrectly rejecting Blue Cross’s eligibility objection. In practice, this would mean that any time an arbitrator decides a threshold issue, a federal court would then be allowed to review each of its subsequent decisions in the arbitration if the losing

side alleges that the arbitrator was wrong on the initial ruling.

Not so. Under the FAA, the question is whether arbitrators had *authority* to decide the threshold issue (here, eligibility) – not whether they ruled correctly. *See RAMS*, at 12. “Under Section 10(a)(4), an arbitration award may be unenforceable, but only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice.” *Id.* at 12 (cleaned up). Nothing even remotely like that is alleged in the complaint. Thus here, like in *RAMS*, the “Complaint does not come close to alleging what is required” for vacatur given the “strong legal presumption that arbitration awards will be confirmed.” *Id.* at 2.

Thus, vacatur would require showing that the arbitrator had no authority to decide eligibility, not that they made the wrong decision on eligibility. Again, it “is not enough to show that the arbitrator committed an error – or even a serious error.” *Id.* at 12-13 (cleaned up); *see also Hidroelectrica Santa Rita S.A. v. Corporacion AIC, SA*, 119 F.4th 920, 925 (11th Cir. 2024); *Gherardi*, 975 F.3d at 1238. Or put differently, in the IDR context, the “sole question” is “whether the arbitrator even arguably performed the assigned task, not whether she got the outcome right or wrong.” *RAMS*, at 13 (cleaned up).

IDREs are expressly authorized to decide eligibility, as Blue Cross concedes. *See* AC¶ 100; *see also* 42 U.S.C. § 300gg-112(b)(5)(D); 45 C.F.R. § 149.510(c)(1)(v).

This resolves the issue. There is no basis to vacate under 9 U.S.C. § 10(a)(4).⁵ If Blue Cross were right, every IDR award would be relitigated in federal court under § 10(a)(4) where the losing side challenges eligibility. Again, this is not the law.

2. “Eligibility” decisions are not subject to unlimited judicial review.

To avoid dismissal, Blue Cross invents a distinction between IDRE rulings on questions like eligibility, and rulings ordering one side to pay the other a certain amount. It argues that the limitations on judicial review apply only to the latter. According to Blue Cross, there is no limit to judicial review of eligibility rulings.

The Eleventh Circuit’s recent ruling in *RAMS* provides no support for the distinction that Blue Cross invents. Indeed, no court has adopted this argument, and there is no basis to do so. *First*, decisions about eligibility are inherently part of every IDR ruling. “Subparagraph A” of § 300gg-111(c)(5), which is what is protected from judicial review, includes all of the IDRE’s work. It says that within 30 days of being appointed, the IDRE must rule on the dispute and select one of the parties’ submissions as the appropriate payment amount. There is no *other* section of the statute that addresses eligibility rulings. All of the IDRE’s work is encompassed in Subparagraph A. If an IDRE ruled that a dispute was not eligible,

⁵ The *Kahn v. Smith Barney Shearson Inc.* decision cited by Blue Cross is irrelevant. Opp. 29 (citing 115 F.3d 930, 933 (11th Cir. 1997)). *Kahn* concerned an arbitrator’s failure to give preclusive effect to a judicial determination—an issue not present here. And in any event, it offers no basis for vacating an eligibility determination the IDR entity was expressly authorized to make.

it would have no awards to choose from. Choosing one proposed award as the winner is entirely premised on its finding of eligibility.

Second, Congress expressly confirmed that IDR applications and eligibility determinations *are* protected from judicial review. Blue Cross says that “nothing in the NSA even suggests that IDREs will decide disputes over IDR eligibility, much less that such decisions will be immune from judicial review.” Opp. 23. That is wrong. There are two sections of the NSA, one relating to IDR for hospital and physician care (at issue here), and one relating to air-ambulance transport. A provision in the latter makes clear that the jurisdiction-stripping provisions in *both* sections “apply with respect to a determination of [an IDRE] under subparagraph (A), the notification⁶ submitted with respect to such determination, the services with respect to such notification, and the parties to such notification.” 42 U.S.C. § 300gg-112(b)(5)(D). *Compare id.*, *with id.* § 300gg-111(c)(5)(E). This too forecloses the distinction on which Blue Cross relies.

Third, while arguing that Subparagraph A only covers the IDR’s decision about which side’s payment proposal is right, Blue Cross expressly challenges such payment rulings. It argues that Sound Physicians somehow violated the law by proposing a payment that is too high, and the IDREs erred by adopting those

⁶ The “notification” refers to the application for IDR submitted by the Defendants here. *Compare* 42 U.S.C. § 300gg-112(b)(1)(B), *with id.* § 300gg-111(c)(1)(B).

proposals. See AC ¶¶ 135-160. Here again, Blue Cross's opposition brief ignores the allegations in its own complaint: its focus on decisions about eligibility disregards that its complaint challenges the IDR's decisions regarding payment.

3. Blue Cross cannot use collateral attacks to avoid the jurisdiction-stripping provision.

Congress prescribed that IDR awards "shall not be subject to judicial review" except under the grounds in the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Blue Cross asks the Court to ignore this, and allow it to attack IDR rulings under RICO, ERISA, and state law. It defends its position on three grounds: (1) that it seeks to overturn thousands of unidentified awards at once; (2) that it seeks injunctive relief; and (3) that it seeks damages beyond those available in the IDR proceedings. Opp. 30-31. The Fifth Circuit rejected a related argument in *Guardian Flight*, holding that it "artificially narrows the term 'judicial review' that Congress used in the NSA." 140 F.4th at 275 n.3. This Court should reject it for three reasons:

First, it makes no sense to say that the bar applies where a losing party challenges one arbitration award but does not apply where it challenges many. Courts routinely reject efforts to repackage arbitration challenges as broader claims. See *Ibarzabal v. Morgan Stanley DW, Inc.*, 2007 WL 9753006, at *3-4 (S.D.N.Y. Dec. 5, 2007) (rejecting class action attacking defendant's alleged conduct in multiple prior arbitrations); *Quintana v. Morgan Stanley DW, Inc.*, 2005 WL 8155929, at *4 (S.D. Fla. Dec. 8, 2005) (rejecting claims based on defendant's failure to

produce discovery materials in several prior arbitrations); *Nazar v. Wolpoff & Abramson, LLP*, 530 F. Supp. 2d 1161, 1166, 1169 (D. Kan. 2008) (rejecting claims alleging misconduct across two arbitration proceedings where “overall thrust” was that “alleged wrongdoing tainted the arbitration proceedings and resulted in an erroneous award”).

Second, seeking injunctive relief is no shortcut to bypass the FAA. In one of the cases Blue Cross cites — *Texas Brine Co., LLC v. American Arbitration Ass’n, Inc.* — the court rejected that argument, holding that claims for “damages and equitable relief” were still an impermissible collateral attack. 955 F.3d 482, 484-85, 489 (5th Cir. 2020). And of course, Blue Cross seeks more than injunctive relief here — it expressly seeks vacatur and millions of dollars of damages. AC ¶ 2, p. 77.

Third, demanding damages for time, fees, and costs incurred during arbitration is also no shortcut to skip the FAA rules. The losing side in an arbitration could say that every time, in every case. Courts rejected this argument in several of the cases that Blue Cross cites. In *Texas Brine*, the court deemed the claims an impermissible collateral attack even though the plaintiff sought fees and costs paid during arbitration. 955 F.3d at 489. Likewise, in *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, the court rejected a collateral attack where the plaintiff sought arbitration costs, reputational damages, and lost business opportunities suffered as a result of prior arbitration. 512 F.3d 742, 749-50 (5th Cir. 2008). To borrow the court’s language from *Gulf Petro Trading*, “[t]hough cloaked

in a variety of federal and state law claims, [Blue Cross's] complaint amounts to no more than a collateral attack on the Final Award itself." 512 F.3d at 750.

C. The *Noerr-Pennington* doctrine bars Blue Cross's claims.

1. As Blue Cross admits, this is not a purely private dispute.

To evade *Noerr-Pennington*, Blue Cross portrays IDR as a proceeding "before a private organization" involving "purely private commercial disputes." Opp. 32, 35. That characterization contradicts its own pleadings, which allege that "HHS administers the IDR initiation process" and that "[a]ny submission made through this system is a statement made to the federal government" subject to 18 U.S.C. § 1001. AC ¶ 58. Blue Cross concedes that *Noerr-Pennington* applies to parties "petitioning courts and agencies." Opp. 34 n.11. That is this case: the IDR process is a Congressionally mandated, quasi-public arbitration mechanism administered by a federal agency, squarely within *Noerr-Pennington's* scope.⁷

⁷ Blue Cross's attempt to distinguish UDRP cases fails. Congress delegated to IDREs authority to resolve disputes under the IDR process just as it did to WIPO for domain name disputes. *See Dean v. Kaiser Found. Health Plan, Inc.*, 562 F. Supp. 3d 928, 934 (C.D. Cal. 2022) ("[T]he U.S. Department of Commerce has delegated authority to resolve disputes over domain names."). Just like the agencies overseeing IDR, WIPO maintains arbitrator lists for dispute assignment. *WIPO Domain Name Panelists*, available at <https://perma.cc/4EQ8-694H> (accessed November 14, 2025). And Blue Cross's assertion that IDR does not involve matters of public concern is belied by its own allegations that the NSA was enacted to remedy a "market failure" with "devastating financial impacts on Americans." AC ¶ 30 (quoting H.R. REP. 116-615, pt. 1, at 52 (2020)).

2. The fraud exception does not apply.

Blue Cross argues that its fraud allegations defeat *Noerr-Pennington* immunity, but that is not the standard. First of all, the allegations in Blue Cross's complaint go far beyond the eligibility/fraud theory. It also seeks to recover because Sound Physicians exercised its right to petition for IDR more often than Blue Cross thinks is appropriate and because it sought more money than Blue Cross thinks is fair. See AC ¶ 176. These allegations go to the core of what *Noerr-Pennington* immunity bars. But Blue Cross has not addressed this at all.

In any event, misrepresentations are not material unless "they 'deprive the entire . . . proceeding of its legitimacy.'" *Tristar Prods., Inc. v. Telebrands Corp., Whele LLC*, 2025 WL 1111513, at *14 (N.D. Fla. Apr. 14, 2025) (omission in original) (quoting *Kottle v. Nw. Kidney Ctrs.*, 146 F.3d 1056, 1062-63 (9th Cir. 1998)). And courts require a showing that the adjudicator could not "detect the alleged false representation itself." *Aventis Pharma S.A. v. Amphastar Pharms., Inc.*, 2009 WL 8727693, at *13 (C.D. Cal. Feb. 17, 2009).

Here, there is no plausible basis to conclude that IDR arbitrators were unaware of or relied on any alleged misrepresentation, as the complaint says the opposite: that Blue Cross objected and argued why the dispute is supposedly ineligible. See AC ¶¶ 87, 99, 101, 139, 159. As discussed above, the IDR process gave Blue Cross a clear opportunity to challenge eligibility, which it did, and arbitrators were required to consider those objections. These facts foreclose any

possibility that arbitrators were unaware of or relied on any alleged misrepresentation in making eligibility determinations.

D. Blue Cross must comply with Rule 9(b) – but it has not.

Blue Cross does not contest that Rule 9(b) applies to fraud claims. Blue Cross has not even provided the required details as to the six claims it identifies by docket number, such as “precisely what statements” are at issue, the “time and place of each such statement and the person responsible for making them,” and “the manner in which” they “misled the plaintiff.” *See RAMS*, at 16, 18.

And Blue Cross does not even attempt to argue that it complied with Rule 9(b) as to the “thousands” of unidentified IDR rulings that it “estimates” were wrong. *See Opp.* 12. Instead, Blue Cross argues that the Court should waive Rule 9(b) because its allegations are complicated. *See id.* at 52. This argument is inconsistent with the Eleventh Circuit’s ruling in *RAMS*. That case makes clear beyond any doubt that Rule 9(b) applies to a challenge like this one. *RAMS*, at 7, 16-22. Indeed, it applies Rule 9(b) strictly and makes clear that the plaintiff failed to satisfy the rule. Certainly, *RAMS* offers nothing to support the idea that Rule 9(b) is waived where a party chooses to challenge many IDR awards at once, but applies strictly when challenging them one by one. Given *RAMS*, adopting such a rule would re-write circuit precedent – and would simply make no sense.

No other possible basis for leniency applies. Blue Cross cites a *qui tam* case where the Eleventh Circuit said, in dicta, that a lenient form of Rule 9(b) “may

apply” when “evidence of fraud was uniquely held by the defendant,” before ruling that it would *not* apply leniency to the relator in that case. *U.S. ex rel. Clausen v. Lab’y Corp. of Am.*, 290 F.3d 1301, 1314, 1314 n.25 (11th Cir. 2002). In any event, the instant case is the opposite of that. Blue Cross is the side that has the most information: it knows better than anyone the kind of health plan each of its members uses (*i.e.*, the reason it asserts that claims were ineligible for IDR). Blue Cross has a list of the IDRs in which it participated and lost. There is no reason it could not have submitted a list and other details required under Rule 9(b), except that it chose not to. It would be error to simply waive a Federal Rule of Civil Procedure in these circumstances.

Nor has Blue Cross provided examples sufficient to “lay a complete foundation for the rest of [its] allegations.” *Otto Candies, LLC v. Citigroup Inc.*, 137 F.4th 1158 (11th Cir. 2025) (quoting *Clausen*, 290 F.3d at 1314 n.25). Where there are thousands of IDRs between the parties, supposed inaccuracies in six cases do not prove or even suggest fraud – they would be entirely consistent with inadvertent errors (if Blue Cross is right that they are errors, which is disputed). No arbitration or court proceeding is perfect, and any set containing a large number of cases will also contain mistakes. As the Eleventh Circuit has explained, even litigation is “occasionally inaccurate.” *United States v. Pendergraft*, 297 F.3d 1198, 1206 (11th Cir. 2002). Courts must be cautious in inferring wrongful intent where lawful conduct is equally plausible or errors may be inadvertent. *See Am. Dental Ass’n v. Cigna*

Corp., 605 F.3d 1283, 1295 (11th Cir. 2010) (explaining intent absent where defendants' conduct was "equally indicative of rational independent action"); *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 622 (5th Cir. 2025) (rejecting fraud claims based on alleged understatement of QPA where plaintiff "allege[d] nothing to show that [the misstatement] was anything other than an inadvertent error, as opposed to an intentional scheme to mislead").

Blue Cross's own errors in this litigation prove the point. As the opening brief set out (pp. 40-42), Blue Cross's first complaint made false assertions of fact about the claims that it offered as evidence of fraud as to three of the six examples, and it listed as a defendant a Sound Physicians entity (now dismissed) that had nothing to do with the claims. If six examples among thousands of Sound Physicians IDRs imply fraud, what does three errors among six mean about Blue Cross's approach in this case?

E. The RICO claims fail as a matter of law.

1. Arbitration submissions cannot be wire or mail fraud.

Blue Cross asks the Court to disregard established precedent that litigation activities, including arbitration submissions, cannot constitute wire fraud. Blue Cross claims that earlier courts did not "consider[] whether the rule *should* apply to arbitration." Opp. 46. Not so. In *Republic of Kazakhstan v. Stati*, the court held that "[a] RICO civil suit is not a vehicle to challenge non-frivolous litigation, or in this case, a valid and final foreign arbitral award." 380 F. Supp. 3d 55, 57 (D.D.C. 2019)

(emphasis added). The court applied the same principle because the alleged predicate acts concerning the prior arbitration “all involve[d] the filing of legal documents and complaints.” *Id.* at 61. Likewise, in *Diamond Resorts Int’l, Inc. v. Aaronson*, the court held that arbitration demands that “simply led to Plaintiffs engaging in subsequent arbitrations that might not have otherwise occurred” cannot constitute wire fraud. 2018 WL 735627, at *5 (M.D. Fla. Jan. 26, 2018).

Blue Cross next relies on *Carroll v. U.S. Equities Corp.* to argue that the Second Circuit’s decision in *Kim v. Kimm* left “open the door for RICO claims premised on abusive litigation activities involving conduct beyond a single lawsuit.” Opp. 47 (quoting *Carroll v. U.S. Equities Corp.*, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020)). But subsequent Second Circuit precedent forecloses that argument. In *Dees v. Zurlo*, the plaintiff attempted to distinguish *Kim* on the ground that it involved only one lawsuit, whereas the plaintiff’s allegations stemmed from multiple state family and criminal court proceedings. 2024 WL 2291701, at *6 (N.D.N.Y. May 21, 2024). The district court rejected that distinction, holding that RICO claims cannot proceed where the “gravamen of Plaintiffs’ complaint concerns [prior] litigation” and “[t]here are no allegations . . . that are entirely unrelated to litigation.” *Id.* at *7. The Second Circuit affirmed, noting that the alleged fraudulent conduct was “directly related to the initiation or continuance of legal proceedings.” *Dees v. Knox*, 2025 WL 485019, at *2 (2d Cir. Feb. 13, 2025).

The Eleventh Circuit likewise rejects RICO claims predicated on litigation

activities, even across multiple disputes. In *Town of Gulf Stream v. O'Boyle*, the defendants “pummeled [a] town with nearly 2,000 public records requests, many of them frivolous, with no intention of actually reviewing the results.” 654 F. App'x 439, 441 (11th Cir. 2016). Yet the Eleventh Circuit reaffirmed that this is not actionable under RICO. *Id.* at 445. Similarly, in *Raney v. Allstate Ins. Co.*, the Eleventh Circuit held that an “alleged conspiracy to extort money through the filing of malicious lawsuits” did not constitute predicate acts under RICO. 370 F.3d 1086, 1087-88 (11th Cir. 2004).

Blue Cross cites *United States v. Lee*, but this case involved documents never filed in court and “not at all directed toward influencing the courts.” 427 F.3d 881, 890 (11th Cir. 2005); *cf.* *Opp.* at 48. The defendants there never initiated litigation and never intended to; rather, filing suit would have hindered their scheme. *Lee*, 427 F.3d at 890. That stands in stark contrast to the allegations here, where the allegations all stem from fully adjudicated IDRs.

Finally, Blue Cross cites wire fraud cases involving false certifications to access statutory programs. *Opp.* 49. None involved adversarial adjudication—let alone binding arbitration. *See* 42 U.S.C. § 300gg-111(c)(5)(E). IDR is not about private submissions from one side only; it is a structured, government-administered arbitration where both parties present competing claims, and an independent decision-maker resolves the dispute. Notably, again here Blue Cross has made an entirely contradictory argument: as to *Noerr-Pennington*, it says IDRs

are purely private disputes, but as to RICO it argues that Sound Physicians committed wire fraud because IDR applications are submitted to the government.

2. Blue Cross's claims should be dismissed because it has failed to identify a RICO enterprise.

Blue Cross relies on an "association-in-fact" theory, which requires allegations that the Defendants shared a common purpose to enrich themselves through a specific criminal scheme. *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1211 (11th Cir. 2020). Blue Cross must plead facts plausibly excluding lawful alternatives, such as differing interpretations of IDR eligibility or inadvertent errors on some of thousands of disputes (which Sound Physicians does not concede). See *Am. Dental*, 605 F.3d at 1295; *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th at 622. It has not. At most, the Complaint alleges each Defendant sought profitable reimbursement through IDR, which does not establish a shared criminal purpose.

Blue Cross wrongly asserts that allegations of a "close contractual relationship and shared financial interest" are sufficient. Opp. 57. But claims based on routine business arrangements require allegations that rule out lawful alternatives. See *Cisneros*, 972 F.3d at 1212 (finding no basis for inferring that a franchisor "shared a fraudulent purpose with its franchisees" where it "operated a franchise model like that of many legitimate businesses"); *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1352, 1352 n.3 (11th Cir. 2016) (observing that the "common

purpose of making money” is not sufficient to find an association-in-fact enterprise between Spirit Airlines and its vendors); *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009) (requiring petitioner to address “obvious alternative explanation” that arrests stemmed from legitimate concerns rather than discriminatory intent).

F. The ERISA claims fail as a matter of law.

Blue Cross claims standing to bring ERISA claims based on delegated authority to recover overpayments and administer IDR. Opp. at 61 (citing AC ¶¶ 22, 256). Yet it says this is the case for only “*certain* ERISA-governed health plans.” *Id.* (emphasis added); *see also* AC ¶¶ 20-25, 256. And then it does not complete the chain by alleging facts to show that the plans that were supposedly defrauded here were indeed health plans as to which it has delegated authority. Indeed, Blue Cross has carefully avoided saying so.

“[F]iduciary status is not an all-or-nothing concept, and a court must ask whether a person is a fiduciary with respect to the particular activity at issue.” *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1277 (11th Cir. 2005); *accord Fadely v. Blue Cross & Blue Shield of Ga., Inc.*, 2011 WL 4974857, at *4 (N.D. Ga. Oct. 18, 2011). Yet Blue Cross provides no governing agreements or contractual language showing delegation of authority for any plan implicated here. That omission is inconsistent with the authority it cites. *Cf. Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347, 1352 n.4 (11th Cir. 1998) (relying on plan documents to assess fiduciary status); *Woods v. S. Co.*, 396 F. Supp. 2d 1351, 1369-70 (N.D. Ga. 2005)

(same); *see also id.* 1:04-CV-1912, Docket No. 21, ¶¶ 15, 18, 76-81.

Blue Cross bears the burden to establish it is plausibly a fiduciary for the plans at issue. *In re ING Groep, N.V. ERISA Litig.*, 749 F. Supp. 2d 1338, 1345 (N.D. Ga. 2010). Without allegations about the governing agreements or contractual language in any of the plans, it has provided nothing to show standing to assert these claims. ERISA's cause of action for equitable relief only provides standing to sue for "a participant, beneficiary, or fiduciary." 29 U.S.C. § 1132(a)(3). The Court should not allow Blue Cross to go forward without establishing ERISA standing.

G. The Court should not reach Blue Cross's deficient state-law claims.

For the reasons above, the Court lacks subject-matter jurisdiction over Blue Cross's state-law claims. The NSA expressly limits review of IDR awards to the vacatur process under the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

In any case, the state-law claims fail as a matter of law. In particular, as explained in the opening brief (pp. 52-54), Counts 9 to 12 require Blue Cross to show reliance on alleged misrepresentations, which it has not done. Blue Cross argues these claims survive because HHS and the IDR arbitrators relied on the supposed misrepresentations as intermediaries with "legal authority to compel the plaintiff's financial loss." Opp. 64-70. But the cases it cites are inapposite. *First*, none involve representations in arbitration or litigation. This federal Court should not be the first to interpret Georgia law to allow judicial review of federal arbitrations under state-law fraud theories. *Second*, even assuming Georgia law

permits fraud claims based on third-party reliance, the claims still fail. Blue Cross would have to show that the alleged misrepresentations caused the harm to Blue Cross, depriving the arbitrators of agency altogether. In practice, its theory would allow the losing side to invoke state law to review any arbitration award where the losing side disagrees with the winning side's submissions to the arbitrator.

Blue Cross's citation as to representations to a non-party decisionmaker is *DeThomas Invs., LLC v. LMRK PropCo*, 918 S.E.2d 601 (Ga. Ct. App. 2025). That case involved representations to a planning commission in connection with zoning. But unlike IDR, the affected party there appears to have had no opportunity to learn of or contest the representations, and instead the board was "entrusted" to protect its rights. *Id.* at 607-08. This is nothing like the present case where Blue Cross submitted objections to eligibility, and the arbitrators ruled against it.

III. CONCLUSION

As to all remaining issues, Sound Physicians reasserts the arguments in its opening brief. While Blue Cross has asked for leave to amend a second time, it has not explained *why* amendment would not be futile, or *what* it would add. The RAMS ruling makes clear what is required for vacatur, and there is nothing that Blue Cross could plead here that would satisfy its standards. Indeed, Blue Cross has already pleaded itself out of court by acknowledging that the supposed fraud was challenged and litigated before the arbitrator. Accordingly, there is no basis for another amended complaint. The Court should dismiss the case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 5.1 AND 7.1

Pursuant to Local Rules 5.1 and 7.1(D) of the United States District Court for the Northern District of Georgia, the undersigned certifies that this document has been prepared in accordance with the font and point size requirements set forth in Local Rule 5.1(C), as modified by the Court's October 31, 2025 Order (Docket No. 64) setting a limit of 10 pages beyond the limit set forth in the Court's local rules, for a total of 25 pages per brief exclusive of the caption, tables, and signature blocks. Specifically, this document has been prepared in 13-point Book Antiqua font on Microsoft Word for Mac OS X (v. 16.101).

November 21, 2025

/s/ Matthew L. Knowles

Exhibit 1

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10135

REACH AIR MEDICAL SERVICES LLC,

Plaintiff-Appellant,

versus

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

Defendants-Appellees.

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

Before JILL PRYOR, GRANT, and MARCUS, Circuit Judges.

MARCUS, Circuit Judge:

This case arises out of an insurance dispute and subsequent arbitration proceedings between REACH Air Medical Services

LLC (“Reach”), a provider of air ambulance services, and Kaiser Foundation Health Plan Inc. (“Kaiser”), a health maintenance organization. In February 2022, Reach provided emergency air ambulance services to a patient insured by Kaiser, but Reach was not in-network with Kaiser. After failing to agree about how much Reach should be paid for the transport, Kaiser and Reach commenced the Independent Dispute Resolution (“IDR”) process outlined in the federal No Surprises Act, 42 U.S.C. §§ 300gg-111–139. Each submitted its offer and rationale to the assigned arbitrator, C2C Innovative Solutions, Inc. (“C2C”) pursuant to the rules and procedures governing the NSA. When C2C chose Kaiser’s offer of \$24,813.48, Reach accused Kaiser of fraud, since Kaiser had submitted a lower figure for its Qualifying Payment Amount (“QPA”) to C2C during the IDR process than it did to Reach before IDR had commenced. Reach sued Kaiser and C2C in the Middle District of Florida to vacate C2C’s IDR determination. The district court dismissed Reach’s Complaint without prejudice and also dismissed C2C from the case with prejudice.

The district court got it right. We review arbitration decisions very narrowly, and there is a strong legal presumption that arbitration awards will be confirmed. Nothing in the newly codified NSA, which has expressly incorporated some sections of the Federal Arbitration Act (“FAA”), has altered that limited scope of judicial review. The Complaint does not come close to alleging what is required to vacate an arbitration award under the FAA for fraud or undue means or because the arbitrator exceeded its authority. Accordingly, we affirm the district court’s dismissal in full.

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I.

The following salient factual allegations are drawn from the Complaint. When reviewing a motion to dismiss, we are required to accept the complaint’s well-pleaded allegations as true. *Smith v. United States*, 873 F.3d 1348, 1351 (11th Cir. 2017) (citing *Montgomery Cnty. Comm’n v. Fed. Hous. Fin. Agency*, 776 F.3d 1247, 1254 (11th Cir. 2015)).

Most healthcare plans include a “network of providers and health care facilities . . . [that] agree by contract to accept a specific amount for their services.” Requirements Related to Surprise Billing, 86 Fed. Reg. 36,872, 36,874 (July 13, 2021). Providers and facilities outside of a patient’s plan or network usually charge higher amounts than these contracted rates. *Id.* When a patient goes to an out-of-network provider or facility, a health insurance issuer “may decline to pay for the service” or may pay for less than the amount the patient is charged. *Id.* Under this system, the healthcare provider can generally bill the patient for the remainder of the balance. *Id.* This practice is known as “balance billing,” or, when it involves medical services from providers or facilities that the patient believed were in-network but were actually out-of-network, “surprise billing.” *Id.*

Congress passed the No Surprises Act (“NSA”) in no small measure to address the issue of “surprise billing.” Among other provisions, the NSA generally limits the amount an insured patient will pay for emergency services furnished by an out-of-network provider and for certain non-emergency services rendered by an

out-of-network provider at an in-network healthcare facility. 42 U.S.C. §§ 300gg-111, 300gg-131, 300gg-132. Under the NSA, healthcare providers must instead seek payment from health plans or health insurance issuers to pay for these services. *Id.* § 300gg-111(c)(1)(A).

These provisions of the NSA also apply to air ambulance services. *Id.* § 300gg-112. After an insured patient receives air ambulance services, the NSA requires group health plans or health insurance issuers to send an initial payment or notice of denial of payment to the air ambulance service provider within 30 days. *Id.* § 300gg-112(a)(3)(A). The provider then has 30 days from the date of payment or notice of denial of payment to initiate negotiations to determine an agreed-upon amount for air ambulance services. *Id.* § 300gg-112(b)(1)(A). However, if negotiations fail, then either side may initiate arbitration through the “independent dispute resolution process.” *Id.* § 300gg-112(b)(1)(B). A “certified IDR entity” oversees the IDR process, during which each side submits an offer for a payment amount, as well as any other information requested by the certified IDR entity relating to the offer. *Id.* § 300gg-112(b)(4), (5)(B). Then, in “baseball-style arbitration” -- in which an arbitrator must choose one of the offers submitted by the parties and cannot select any other figure -- the certified IDR entity selects one of the offers submitted to be the amount of payment for air ambulance services rendered. *Id.* § 300gg-112(b)(5)(A)(i). Neither party can respond to the other party’s submission.

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On February 7, 2022, a patient insured through Kaiser Foundation Health Plan Inc. required emergency air transport from Santa Rosa, California to Redwood City, California. REACH Air Medical Services LLC answered the call, flying the patient 80 miles on a helicopter specially configured for medical transport and providing continuous medical care during the trip. Reach, however, was out-of-network with Kaiser, meaning that the two did not have a pre-negotiated reimbursement amount for the trip. Kaiser paid Reach \$24,813.48 for the transport. In its Explanation of Benefits statement, Kaiser represented to Reach that this amount was the “Qualifying Payment Amount” -- essentially the median rate a health plan pays in-network providers. 42 U.S.C. § 300gg-111 (a)(3)(E)(i). Reach and Kaiser could not agree on how much Reach should have been paid for the air transport, so the dispute proceeded to the IDR process under the NSA. Reach and Kaiser also could not agree on an arbitrator to adjudicate their dispute, so they were assigned to arbitrate before an arbitrator from C2C Innovative Solutions, Inc., a medical appeals company that began accepting IDR disputes between payors and providers under the NSA in 2022.

During the IDR, Kaiser submitted an offer for \$24,813.48. Kaiser also told C2C that the QPA was \$17,304.29 -- a lower QPA than what Kaiser originally told Reach. According to Reach, this lower figure indicated to C2C that Kaiser’s offer was higher than the QPA. Meanwhile, Reach submitted an offer of \$52,474.60 to C2C. After baseball-style arbitration, and after reviewing all of the

evidence, C2C chose Kaiser’s offer. The arbitrator determined that Kaiser’s “offer best represents the value of the services at issue.”

Unhappy with the results before the IDR arbitration, on October 26, 2022, Reach sued Kaiser and C2C in the United States District Court for the Middle District of Florida.¹ In its Complaint, Reach asked the district court to vacate the arbitration award rendered and to direct that C2C rehear the claim. Reach asserted, among other things, that the health plan secured the arbitrator’s decision through “undue means and misrepresentations” and “in bad faith.” Kaiser and C2C moved to dismiss the Complaint.

On November 1, 2023, the district court granted both motions, dismissing the Complaint without prejudice as to Kaiser and with prejudice as to C2C. The trial court explained that judicial review of IDR awards is limited to the grounds available under the FAA, 9 U.S.C. § 10(a)(1)–(4), and cannot be expanded to include circumstances where facts may be misrepresented to the IDR arbitrator. Under that framework, the court ruled that Reach failed to meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). The district court afforded Reach the opportunity to amend its Complaint. Finally, it determined that

¹ A similar suit was filed in the same district court a few weeks earlier by Med-Trans Corporation against C2C and Capital Health Plan, Inc. The district court addressed the motions to dismiss in that case at the same time it addressed the motions to dismiss in this case. Med-Trans also appealed the district court’s ruling to our Court (Case No. 24-10134), but the parties settled that case and filed a motion to voluntarily dismiss their appeal, which we granted on May 30, 2024.

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Congress did not create a cause of action in the NSA allowing a party to sue the IDR entities themselves and therefore granted C2C's motion to dismiss with prejudice. On November 3, 2023, Reach filed a Notice of Intent to Stand on Existing Complaints, disclaiming its leave to amend. The court entered final judgment on December 22, 2023.

This timely appeal followed.

II.

We review the district court's dismissal of Reach's claims for failure to state a claim *de novo*. *Smith*, 873 F.3d at 1351 (citing *Pedro v. Equifax, Inc.*, 868 F.3d 1275, 1279 (11th Cir. 2017)). "In assessing the sufficiency of a claim, we accept all well-pleaded allegations as true and draw all reasonable inferences in the plaintiff's favor." *Id.* (citing *Montgomery Cnty. Comm'n*, 776 F.3d at 1254). However, "[a] plaintiff must plausibly allege all the elements of the claim for relief. Conclusory allegations and legal conclusions are not sufficient; the plaintiff[] must 'state a claim to relief that is plausible on its face.'" *Id.* (alterations in original) (quoting *Feldman v. Am. Dawn, Inc.*, 849 F.3d 1333, 1339–40 (11th Cir. 2017)).

In addition, "claims of fraud must satisfy the requirements of Rule 9(b)." *Omnipol, A.S. v. Multinational Def. Servs., LLC*, 32 F.4th 1298, 1307 (11th Cir. 2022). "Under Rule 9(b), claims of fraud must be [pled] with particularity, which means identifying the who, what, when, where, and how of the fraud alleged." *Id.* (citing *Miz-zaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008)). This rule "alert[s] defendants to the 'precise misconduct with which

they are charged’ and protect[s] defendants ‘against spurious charges of immoral and fraudulent behavior.’” *Id.* (quoting *Ziembra v. Cascade Int’l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001)).

On appeal, Reach asserts that (1) C2C exceeded its authority because it applied an illegal presumption for Kaiser’s QPA; (2) Kaiser’s misrepresentation of its QPA warranted vacatur of the arbitration award because it constituted either fraud or undue means; and (3) IDR entities like C2C may be sued under the NSA.

The district court correctly dismissed the Complaint because the arbitrator did not act in excess of its authority, and Reach did not adequately plead fraud or undue means. Under the No Surprises Act:

A determination of a certified IDR entity under subparagraph (A)--

(I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and

(II) shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9.

42 U.S.C. § 300gg-111(c)(5)(E)(i). Section 10(a) of Title 9 of the FAA, in turn, reads this way:

(a) In any of the following cases the United States court in and for the district wherein the award was

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made may make an order vacating the award upon the application of any party to the arbitration--

- (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).

As a preliminary matter, the district court correctly determined that the NSA incorporates the meaning of the terms used in the FAA, 9 U.S.C. § 10(a)(1)–(4), as interpreted by courts. “When Congress adopts a new law that incorporates sections of a prior law, ‘Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.’” *United States v. Florida*, 938 F.3d 1221, 1228 (11th Cir. 2019) (quoting *Lorillard v. Pons*, 434 U.S. 575, 581

(1978)). Moreover, “[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.” *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (citing *Lorillard*, 434 U.S. at 580–81); see also *Assa’ad v. U.S. Att’y Gen.*, 332 F.3d 1321, 1329 (11th Cir. 2003) (same); *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 270 (2020) (explaining that “when Congress ‘adopt[s] the language used in [an] earlier act,’ we presume that Congress ‘adopted also the construction given by this Court to such language, and made it a part of the enactment.’” (alterations in original) (quoting *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 139 S. Ct. 628, 634 (2019))).

The NSA explicitly incorporates the FAA’s provisions allowing for the vacatur of arbitration awards: “A determination of a certified IDR entity . . . shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of Title 9.”² 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Because the

² Reach contends that a different subsection of the NSA supplies independent grounds for vacating an arbitration award. Reach cites subsection (I) of 42 U.S.C. § 300gg-111(c)(5)(E)(i), which instructs that an IDR entity’s determination “shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of fact[.]” 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). Reach insists that by declaring an arbitration award to be nonbinding where “evidence of misrepresentation of facts presented to the IDR entity” is present, subsection (I) implicitly provides a distinct cause of

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NSA is “a new law that incorporates sections of a prior law,” we presume that Congress “had knowledge of the interpretation given to the incorporated law” -- in this case, the FAA. *Florida*, 938 F.3d at 1228 (quoting *Lorillard*, 434 U.S. at 581). Thus, we need not reinterpret the provisions of the FAA as Reach suggests -- we may rely instead on our case law interpreting the FAA. After all, Congress designed the IDR process to create an “efficient” and streamlined vehicle for a certain category of disputes, all designed to “minimiz[e] costs” -- similar purposes to those animating the passage of the FAA. 42 U.S.C. § 300gg-111(c)(3)(A); *id.* § 300gg-111(c)(4)(E); *see O.R. Sec., Inc. v. Pro. Plan. Assocs., Inc.*, 857 F.2d 742, 745 (11th Cir. 1988) (“It is well-established that ‘[t]he purpose of the Federal Arbitration Act was to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation.’” (alteration in original) (quoting *Ultracashmere House, Ltd. v. Meyer*, 664 F.2d 1176, 1179 (11th Cir. 1981))).

“Under the FAA, courts may vacate an arbitrator’s decision ‘only in very unusual circumstances.’” *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013) (quoting *First Options of Chi., Inc. v.*

action to challenge an arbitration award under the NSA. The district court supplied several compelling reasons to reject this reading. As discussed below however, *see infra* at pp. 15–22, even if we were to adopt Reach’s reading of subsection (I), because the Complaint’s allegations fail to describe Kaiser’s fraud or intentional misrepresentations with sufficient particularity under Rule 9(b), vacatur would still be improper under the NSA.

Kaplan, 514 U.S. 938, 942 (1995)). “There is a presumption under the FAA that arbitration awards will be confirmed, and ‘federal courts should defer to an arbitrator’s decision whenever possible.’” *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1321 (11th Cir. 2010) (quoting *B.L. Harbert Int’l, LLC v. Hercules Steel Co.*, 441 F.3d 905, 909 (11th Cir. 2006)). A party seeking to vacate an arbitrator’s award “bears the heavy burden of demonstrating that vacatur is appropriate” and must prove “the existence of one or more of four statutorily enumerated causes for reversal.” *Wiand v. Schneiderman*, 778 F.3d 917, 925 (11th Cir. 2015) (citing *Brown v. ITT Consumer Fin. Corp.*, 211 F.3d 1217, 1223 (11th Cir. 2000)).

We begin with Reach’s claim that C2C exceeded its authority under Section 10(a)(4) of the FAA by applying an illegal presumption in favor of Kaiser. Under Section 10(a)(4), an arbitration award “may be unenforceable,” but “only when [an] arbitrator strays from interpretation and application of the agreement and effectively ‘dispense[s] his own brand of industrial justice.’” *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 671 (2010) (alterations in original) (quoting *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 509 (2001) (per curiam)). Indeed, “[w]hile a federal court may vacate an arbitration award when it ‘exceeds the scope of the arbitrator’s authority,’ few awards are vacated because the scope of the arbitrator’s authority is so broad.” *Wiregrass Metal Trades Council AFL-CIO v. Shaw Env’t & Infrastructure, Inc.*, 837 F.3d 1083, 1087 (11th Cir. 2016) (quoting *IMC-Agrico Co. v. Int’l Chem. Workers Council of the United Food & Com. Workers Union*, 171 F.3d 1322, 1325 (11th Cir. 1999)) (internal citation omitted). “It is not

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enough . . . to show that the [arbitrator] committed an error -- or even a serious error.” *Sutter*, 569 U.S. at 569 (alterations in original) (quoting *Stolt-Nielsen*, 559 U.S. at 671). Rather, “[o]nly if ‘the arbitrator act[s] outside the scope of his . . . authority’ -- issuing an award that ‘simply reflect[s] [his] own notions of [economic] justice’ . . . -- may a court overturn his determination.” *Id.* (quoting *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62 (2000)).

“[U]nder our current scheme, an arbitrator’s actual reasoning is of such little importance to our review that it need not be explained -- the decision itself is enough.” *Gherardi v. Citigroup Glob. Mkts. Inc.*, 975 F.3d 1232, 1237 (11th Cir. 2020) (citing *O.R. Sec., Inc. v. Pro. Plan. Assocs., Inc.*, 857 F.2d 742, 747 (11th Cir. 1988)). “Our ‘sole question’ under § 10(a)(4) . . . is ‘whether the arbitrator (even arguably) [performed the assigned task], not whether she got [the outcome] right or wrong.’” *Id.* at 1238 (quoting *Wiregrass*, 837 F.3d at 1088).

We have recognized only a few examples of instances in which an arbitrator exceeds his authority under Section 10(a)(4):

awarding relief on a statutory claim when the arbitration agreement allows only for arbitration of contractual claims, *see Paladino v. Avnet Comput. Techs., Inc.*, 134 F.3d 1054, 1061 (11th Cir. 1998); failing to give preclusive effect to an issue already (and properly) decided by a court, *see Kahn v. Smith Barney Shearson Inc.*, 115 F.3d 930, 933 (11th Cir. 1997); and forcing a party to submit to class arbitration without a contractual

basis for concluding that the party agreed to it, *see Stolt-Nielsen*, 559 U.S. at 684.

Id. at 1237. None of these circumstances, or anything even remotely resembling them, is present here.

What's more, even if we were to more closely scrutinize C2C's arbitral determination, Reach fails to plausibly allege that C2C failed to interpret the NSA and related regulations or that it applied an illegal presumption in favor of Kaiser's submitted QPA. The IDR determination reads this way:

As noted above, the IDRE must consider related and credible information submitted by the parties to determine the appropriate [out of network] rate. As set forth in regulation, additional credible information related to certain circumstances was submitted by both parties. However, the information submitted did not support the allowance of payment at a higher OON rate.

Based upon review of the submitted information, the IDRE has selected the non-initiating party's offer of \$16,781.48 for code A4031 and \$8,032.00 for code A0436. The IDRE finds that this offer best represents the value of the services at issue. Therefore, the IDRE has determined the non-initiating party prevailed.

C2C explained why it chose the higher OON rate between the offers that Kaiser and Reach submitted (both of which exceeded the QPA that Kaiser submitted to C2C). In other words,

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C2C explained that after reviewing all of the evidence submitted in the IDR process, and after being required by statute to choose between the two offers submitted by Reach and Kaiser, the better payment option was the lower offer. The language that Reach identifies in C2C's IDR determination -- that the "information submitted did not support the allowance of payment at a higher OON rate" -- indicates only that Kaiser's offer was better than Reach's offer. The language of C2C's IDR determination does not support Reach's conclusory argument that C2C applied an illegal presumption in favor of Kaiser and thereby exceeded its authority as an arbitrator. C2C never said in the award that Reach was required to "prove that 'a higher OON rate' than the QPA was warranted." It also never said that the QPA was the baseline. Accordingly, the district court correctly dismissed Reach's claim that the arbitrator exceeded its authority.

Moreover, the district court correctly determined that Reach failed to plead that the IDR determination was obtained through "fraud" or "undue means" because Reach failed to meet its burden under FAA Section 10(a)(1). We begin with the allegations of fraud. Under FAA Section 10(a)(1), which permits vacatur of an arbitration award when "the award was procured by . . . fraud," 9 U.S.C. § 10(a)(1), we apply a three-part test: (1) "[T]he movant must establish the fraud by clear and convincing evidence"; (2) "the fraud must not have been discoverable upon the exercise of due diligence prior to or during the arbitration"; and (3) "the person seeking to vacate the award must demonstrate that the fraud materially related to an issue in the arbitration." *Bonar v. Dean Witter*

Reynolds, Inc., 835 F.2d 1378, 1383 (11th Cir. 1988) (citations omitted).

It is undisputed that the heightened pleading standards of Rule 9(b) apply to Reach’s claim that Kaiser committed fraud. Federal Rule of Civil Procedure 9(b) “plainly requires a complaint to set forth (1) precisely what statements or omissions were made in which documents or oral representations; (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) them; (3) the content of such statements and the manner in which they misled the plaintiff; and (4) what the defendant obtained as a consequence of the fraud.” *FindWhat Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1296 (11th Cir. 2011) (citations omitted). “Notably, the ‘[f]ailure to satisfy Rule 9(b) is a ground for dismissal of a complaint.’” *Id.* (alteration in original) (quoting *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1012 (11th Cir. 2005) (per curiam)).

First, Reach fails to establish “precisely what statements or omissions were made in which documents or oral representations.” *Id.* In essence, Reach alleges that Kaiser told Reach one figure for the QPA and told C2C another figure during the IDR process. But the entirety of Reach’s allegations regarding the figures includes the following:

4. The patient was insured through Kaiser, with which REACH is OON. Kaiser paid REACH \$24,813.48 for the transport, representing to REACH that the amount “allowed” on its Explanation of Benefits (“EOB”) for the claim was its QPA.

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28. On April 21, 2022, Kaiser issued an EOB for the California transport. It “allowed” \$24,813.48 and paid the claim accordingly (minus a \$250.00 copay). The charges were coded as “claim paid at allowed amount.” There was no explanation of why/how the amount was selected. Kaiser represented to REACH that the amount allowed was its QPA for the claim.

...

34. . . . Kaiser’s offer on the claim was the amount it represented to REACH was its QPA. By submitting a lower QPA to C2C, Kaiser misled C2C into believing it was offering an amount higher than its QPA. C2C reviewed this amount and then applied an illegal presumption in favor of the QPA, selecting the offer closest to the QPA and requiring REACH to prove that “a higher OON rate” than the QPA was warranted. Naturally, this resulted in a decision in favor of Kaiser.

35. Kaiser has developed a scheme to minimize payments on air ambulance transports by misrepresenting the amount of its QPA to providers and IDR entities. Kaiser furthers the scheme by concealing information essential to understanding what its QPA actually is and how it was calculated. This is all done so no one can question Kaiser’s QPA methodology, which results in two different QPAs, each of which wildly differs from market rates. Kaiser is securing IDR awards through undue means.

The only allegation in the Complaint regarding the content of the first statement is, “Kaiser represented to REACH that the amount allowed was its QPA for the claim.” The Complaint does not provide any further details about how this representation was made, or whether the alleged representation that “the amount ‘allowed’ on its Explanation of Benefits . . . for the claim was its QPA” was made in the same EOB document or in a separate document.

Additionally, the Complaint does not allege “the time and place of each such statement and the person responsible for making . . . them.” *FindWhat Inv. Grp.*, 658 F.3d at 1296. It says only that the EOB was issued on April 21, 2022. The Complaint does not explain the place where either fraudulent statement was made, nor does it allege the time of the second statement, only that Kaiser submitted a different and lower QPA of \$17,304.29 to C2C.

The Complaint also does not explain “the manner in which [the fraudulent statements] misled the plaintiff.” *Id.* By Reach’s own admission, “[b]ecause the purported QPA [initially offered by Kaiser] was far below reasonable market rates, REACH initiated the Open Negotiation Period.” In other words, Reach was not misled by Kaiser’s figure at all. Instead, Reach recognized that Kaiser’s purported QPA was “far below reasonable market rates,” which caused Reach to initiate the negotiation process under the NSA. Had Kaiser supplied to Reach what Reach refers to as the later QPA figure of \$17,304.29, it would have been even more obvious that the offered QPA was far below market rate.

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Finally, the Complaint does not articulate what Kaiser obtained as a result of the alleged fraud. Reach never explains how Kaiser's alleged misrepresentation of the QPA -- to Reach or to C2C -- is connected to C2C's ultimate selection of Kaiser's figure. The Complaint alleges that "[t]he NSA requires arbitrators to consider certain categories of information in determining the appropriate OON," and that "[t]he QPA is only one such piece of information." According to Reach, arbitrators must also consider the following information:

- the quality and outcomes measurements of the provider that furnished the services;
- the acuity of the individual receiving the services or the complexity of furnishing such services to such individual;
- the training, experience, and quality of the medical personnel that furnished the services;
- ambulance vehicle type, including the clinical capability level of such vehicle;
- population density of the pick up location (such as urban, suburban, rural, or frontier); and
- demonstrations of good faith efforts (or lack of good faith efforts) made by the nonparticipating provider or the plan or issuer to enter into network agreements and, if applicable,

contracted rates between the provider and the plan or issuer, as applicable, during the previous 4 plan years.

However, these are exactly the same factors -- in almost the exact same language -- C2C said it considered in its IDR determination, which states:

In determining which offer to select, the IDRE must consider:

A. The qualifying payment amount (QPA) for the applicable year for the same or similar item or service.

B. Additional related and credible information relating to the offer submitted by the parties.

Parties may submit additional information regarding any of the six circumstances, which include:

1. The quality and outcomes measurements of the provider of air ambulance services that furnished the services.
2. The acuity of the condition of the participant, beneficiary, or enrollee receiving the service, or the complexity of furnishing the service to the participant, beneficiary, or enrollee.
3. The level of training, experience, and quality of the medical personnel that furnished the air ambulance services.

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4. The air ambulance vehicle type, including the clinical capability level of the vehicle.
5. The population density of the point of pick-up for the air ambulance (such as urban, suburban, rural, or frontier).
6. Demonstrations of good faith efforts (or lack thereof) made by the OON provider of air ambulance services or the plan to enter into network agreements, as well as contracted rates between the provider and the plan during the previous four plan years.

Notably, C2C's IDR determination explicitly acknowledges that the parties submitted this information and that C2C considered it:

As noted above, the IDRE must consider related and credible information submitted by the parties to determine the appropriate OON rate. As set forth in regulation, additional credible information related to certain circumstances was submitted by both parties. However, the information submitted did not support the allowance of payment at a higher OON rate.

Thus, C2C never said that the QPA was dispositive, that the QPA overrode the other pieces of evidence considered, or that the amount of Kaiser's offer is what C2C would have come up with in a vacuum. Instead, C2C considered evidence regarding multiple factors, including but not limited to the QPA, and it ultimately determined that Kaiser's offer was the better one. Accordingly, Reach

has failed to sufficiently allege that the arbitration award was procured through fraud.

Next, the Complaint fails to sufficiently allege that Kaiser procured the arbitration award through undue means. Although we have never defined “undue means” under the Federal Arbitration Act, other Courts of Appeals have limited undue means to those actions “equivalent in gravity to corruption or fraud, such as a physical threat to an arbitrator or other improper influence.” *Am. Postal Workers Union v. U.S. Postal Serv.*, 52 F.3d 359, 362 (D.C. Cir. 1995); *accord Hoolahan v. IBC Advanced Alloys Corp.*, 947 F.3d 101, 112–13 (1st Cir. 2020); *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 622 (5th Cir. 2025); *PaineWebber Grp., Inc. v. Zinsmeyer Trs. P’ship*, 187 F.3d 988, 991 (8th Cir. 1999). At most, the Complaint asserts only that Kaiser submitted a different figure to C2C during IDR than it did to Reach before the IDR had commenced. The allegations fall far short of alleging that Kaiser used undue means, on the level of “physical threat to an arbitrator,” *Am. Postal Workers Union*, 52 F.3d at 362, to procure the IDR award.

We also note that the use of the process of baseball-style arbitration in IDR means that the selection of Kaiser’s figure may have been the result of Reach’s offer being unreasonably high. Thus, for example, suppose that C2C determined that the value of Reach’s services was \$30,000 and that Kaiser had submitted the same offer figure of \$24,813.48. Had Reach offered \$29,000, C2C would have chosen Reach’s figure, since the number would be closer to the actual value of Reach’s services provided. But because

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Reach submitted an offer for \$52,474.60 -- far above the hypothetical value determined by C2C -- C2C instead went with Kaiser's lower figure. In this way, baseball-style arbitration would have worked exactly as intended: incentivizing both parties to eschew extreme offers that the arbitrator would be more likely to reject.

Finally, we observe that the parties agree it is not procedurally necessary to name C2C as a defendant in this case, provided that the district court has the authority to order the IDR entity to perform a new arbitration in the event it vacates the IDR award. It is undisputed that, under the NSA, the district court does have such authority, and may remand the case back to the IDR entity to start arbitration again, should it find that one of the grounds in 9 U.S.C. § 10(a)(1)–(4) has been satisfied. Because having the arbitrator as a defendant in the case is not necessary for a party to bring a challenge to an IDR award, we affirm the district court's dismissal of C2C from the case. We need not and do not decide whether the NSA creates a cause of action against certified IDR entities.

AFFIRMED.