IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

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

Plaintiff,

v.

HALOMD, LLC, HOSPITALIST MEDICINE PHYSICIANS OF GEORGIA – TCG, P.C. and SOUND PHYSICIANS EMERGENCY MEDICINE OF GEORGIA, P.C.,

Defendants.

Case No. 1:25-cv-02919-TWT

PLAINTIFF BLUE CROSS BLUE SHIELD HEALTHCARE PLAN OF GEORGIA, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The Amended Complaint ("AC" at ECF No. 43) seeks to hold Defendants[1] liable for filing millions of dollars' worth of fraudulent disputes against BCBSGA[2] through the "independent dispute resolution" ("IDR") process created under the No Surprises Act ("NSA"). As part of their scheme, Defendants: (1) submitted *thousands* of forms to federal agencies falsely certifying that disputes involve "qualified" services within the scope of the IDR process; (2) employed artificial intelligence ("AI") to overwhelm the system with hundreds of disputes at a time; and (3) requested payment at rates vastly beyond what the market provides or the law permits.

This scheme works by exploiting the NSA's honor system, under which providers self-certify dispute eligibility. To implement this system, the Departments of Health and Human Services ("HHS"), Labor, and Treasury (collectively, the "Departments") built an online screening tool (the "IDR Portal") through which parties submit and certify that disputes meet eligibility criteria (*e.g.*, they do not involve Medicaid claims). While this tool prevents parties from **inadvertently** submitting ineligible disputes, it cannot prevent

---

[1] "Defendants" include HaloMD, LLC ("HaloMD") and Hospitalist Medicine Physicians of Georgia – TCG, PC and Sound Physicians Emergency Medicine of Georgia, P.C. (collectively, the "Provider Defendants"). HaloMD and the Provider Defendants are members of the "Sound Physicians Enterprise."

[2] "BCBSGA" is Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.

fraud. There is no verification process; once Defendants make fraudulent submissions, the Departments automatically transmit the dispute to certified IDR entities ("IDREs") tasked with determining how much they should be paid.

Unlike court proceedings or commercial arbitrations, the IDR process contains no safeguards to prevent this type of fraud. While regulations direct IDREs to review eligibility, they: (1) require that they consider only the providers' submissions, and (2) do not require that they consider health plan objections or issue any written eligibility decisions. Making matters worse, **IDREs only get paid if they find a dispute eligible and proceed to make a payment determination**. HaloMD alone submitted 134,318 disputes in the second half of 2024. The IDREs overseeing those disputes stood to earn tens of millions of dollars if, and only if, they decided eligibility in HaloMD's favor.

Defendants' motions ignore the realities of the IDR process and BCBSGA's well-pled factual allegations. By misquoting the NSA and invoking inapplicable doctrines, Defendants claim that the Court is powerless to address their fraud. Accepting these misguided arguments would give Defendants' scheme a judicial seal of approval and invite similar bad actors to follow suit, with devastating consequences for health plans and American consumers. The Court should deny Defendants' motions for the following reasons.

First, the jurisdictional arguments fail. BCBSGA has standing to recover millions of dollars in damages incurred as a direct result of Defendants'

fraud. And HaloMD is subject to personal jurisdiction via the Racketeering Influenced and Corruption Organizations ("RICO") Act, Employee Retirement Income Security Act ("ERISA"), and Georgia long-arm statute.

Second, Defendants cannot avoid judicial review of their fraud. The NSA limits judicial review of IDRE **payment** determinations, not **eligibility** decisions. The *Noerr-Pennington* doctrine protects First Amendment activity, not fraudulent misrepresentations in private disputes. And collateral estoppel does not apply to IDRE eligibility "decisions," which Defendants have not even submitted to the Court.

Third, BCBSGA pleads all elements of its RICO claims. No court has applied the "litigation activities" exemption to IDR proceedings, and doing so would be absurd given: (1) the policies underlying the exemption, and (2) the fact that the activities here involve false certifications to federal agencies.

Fourth, BCBSGA states a claim under ERISA. The ERISA-governed plans at issue delegate to BCBSGA the authority to recover overpayments, and BCBSGA pleads violations of specific ERISA provisions and regulations.

Fifth, BCBSGA adequately pleads claims under Georgia state law for violation of the Georgia RICO statute, common law fraud, negligent misrepresentation, statutory fraud, theft by deception, civil conspiracy, and violation of the Georgia Uniform Deceptive Trade Practices Act ("GUDTPA").

Finally, the AC is not a shotgun pleading.

BACKGROUND

A. The NSA Was Intended to Protect Consumers and Reduce Health Care Costs.

Before the NSA, out-of-network providers engaged in the aggressive and financially devastating practice of "surprise billing." AC ¶ 28. Rather than go "in-network" and agree to reasonable contract rates with health plans, these providers exploited patients' inability to select an in-network provider in certain situations (*e.g.*, emergency care) to bill them at "inflated," "non-market-based rates" known as "billed charges." *Id.* ¶¶ 26-29; H.R. Rep. No. 116-615 (2020), at 53, 57. Patients faced astronomical bills for the difference between providers' billed charges and the amounts covered by health plans. AC ¶ 28.

Congress enacted the NSA (effective January 1, 2022) to protect patients from surprise bills and to bring down the cost of out-of-network care involving specific types of plans and services. AC ¶¶ 1, 32. If an out-of-network provider of NSA covered services (*e.g.*, emergency or air ambulance services) disagrees with the amount paid by a health plan, it has 30 business days to provide a notice to begin "open negotiations." *Id.* ¶¶ 31-34; 42 U.S.C. § 300gg-111(c)(1)(A). If the parties cannot reach a resolution in 30 days, and all other prerequisites are met, the provider may initiate IDR through the IDR Portal. AC ¶ 35; *see* 42 U.S.C. § 300gg-111(c)(1)(B); 45 C.F.R. § 149.510(b)(2)(i).

Critically, a provider may only initiate IDR for a "qualified IDR item or

service," subject to strict criteria. AC ¶ 37; 42 U.S.C. § 300gg-111(c)(1); 45 C.F.R. § 149.510(a)(2)(xi), (b)(1), (b)(2). For example, to qualify for IDR:

a) the patient must have coverage via a group health plan or health insurance issuer, and not a government plan like Medicare or Medicaid;

b) the dispute must not be governed by a state surprise billing law (*i.e.*, a "specified state law"); and

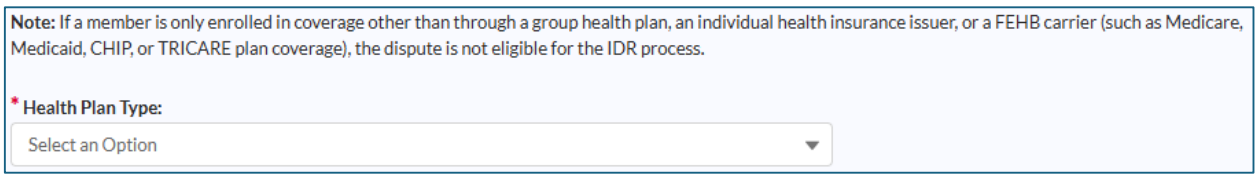
c) the provider must have exhausted the open negotiations period and initiated the IDR dispute in a timely manner.

B. The NSA Employs an Honor System to Prevent Providers from Initiating IDR with Ineligible Disputes.

The NSA limits the IDR process to disputes over a "qualified IDR item or service" that meet strict eligibility criteria. AC ¶ 37. For this reason, HHS requires providers to initiate IDR though an eligibility screening tool on the IDR Portal (https://nsa-idr.cms.gov/paymentdisputes/s/). AC ¶ 44. To submit a dispute, the provider must answer "Qualification Questions," confirming that the eligibility criteria are met. *Id.* ¶¶ 43-57. This self-certification, provided in a sworn statement to multiple government agencies, constitutes an honor system that safeguards against the filing of ineligible disputes. *See id.*

Through the Qualification Questions, the IDR Portal reminds providers of all eligibility criteria required to initiate a dispute. AC ¶¶ 45, 47. If the provider fills out any field with an answer that would render the dispute ineligible, the IDR Portal immediately advises them of ineligibility and prevents them from submitting the form altogether. *Id.* ¶¶ 50-53.

For example, the first page of the Qualification Questions on the IDR Portal requires the initiating party to select a "Health Plan Type." *Id.* ¶ 50.



The page makes clear that if the member is enrolled in Medicare or Medicaid, "the dispute is not eligible for the IDR process." The initiating party cannot select a Medicare or Medicaid health plan type and proceed with initiation. *Id.*

After answering all of the Qualification Questions, the provider must complete a Notice of IDR Initiation form with a signed attestation 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." *Id.* ¶¶ 43-56. By making that attestation and submitting the form, the provider causes a copy of the Notice of IDR Initiation, including the provider's attestation, to be provided to the Departments, the IDRE, and the relevant health plan. *Id.* ¶¶ 56, 58. Once the Notice of IDR Initiation has been submitted, both parties are responsible for paying a $115 administrative fee that will not be refunded, even if the dispute is later found to be ineligible for IDR. *Id.* ¶ 69.

C. Unlike Court Proceedings or Commercial Arbitration, the IDR Process Lacks Safeguards to Protect against Fraud.

Although sometimes referred to as arbitration, IDR bears no resemblance to the process that term commonly evokes. Congress designed

IDR as a highly informal procedure to resolve relatively low-value disputes, without the need for legal counsel, based on the submission of blind "offers." *See* 42 U.S.C. § 300gg-111(c)(5). There is no discovery, no evidentiary requirements, no hearings, no testimony (live or written), and no procedures to even view—much less verify and rebut—an opposing party's offer. *See id.* Disputes are adjudicated by employees of private entities (IDREs), not an identifiable judge or arbitrator. *See id.*

As discussed below, IDRE determinations "include minimal justification or rationale," and there is "limited transparency into how [IDREs] evaluate submissions." *No Surprises Act Arbitrators Vary Significantly in Their Payment Decision Making Patterns*, GEORGETOWN UNIV. CENTER ON HEALTH INS. REFORMS, available at http://bit.ly/4heOcWQ. Such procedural shortcomings led the government to recently urge IDREs to "reduce errors" and institute "robust quality assurance (QA) programs to verify dispute eligibility and review payment determinations." *Federal IDR Technical Assistance for Certified IDR Entities and Disputing Parties* (June 2025), available at https://bit.ly/4owqN5H.

1. IDR Provides No Meaningful Process to Dispute Providers' Misrepresentations of Eligibility.

Once a provider submits a dispute through the IDR Portal, there is no meaningful process for health plans to dispute eligibility. Per the NSA's

regulations, a health plan must submit any eligibility objections to HHS through the IDR Portal within three business days. 45 C.F.R. § 149.510(c)(1)(iii). The regulations do not affirmatively require HHS to share these objections with the IDRE. *See id.*[3] Instead, the regulations state that IDREs "must review the information submitted in the notice of IDR initiation"—**with the provider's attestation of eligibility**—"to determine whether the Federal IDR process applies." AC ¶ 64; 45 C.F.R. § 149.510(c)(1)(v). Moreover, the regulations do not require IDREs to conduct hearings or issue decisions (written or otherwise) explaining eligibility decisions. *See id.* It is thus impossible to know whether an IDRE considered any information beyond a provider's attestation or what reasoning it employed to find a dispute eligible.

2. IDREs Have a Financial Stake in Eligibility Decisions.

IDRE eligibility determinations are further compromised by a perverse economic incentive that would immediately disqualify a factfinder in any traditional court or arbitration: **IDREs are not paid unless they determine that the dispute is eligible for IDR and issue a payment determination.** AC ¶ 70; 42 U.S.C. § 300gg-111(c)(5)(F). This means that health plans can only

[3] Informal guidance advises IDREs to review a health plan's objection to eligibility, *see* IDR Guidance for Certified IDR Entities, CMS, available at https://bit.ly/47cn0U6, but no regulation requires them to do so.

prevail in their objections to eligibility if the IDREs both: (1) spend the additional time needed to verify eligibility (which the regulations do not require), and (2) reach a conclusion requiring them to forego compensation.

Again, IDREs' fees range from several hundred to over a thousand dollars per dispute, depending on the number of disputes involved. AC ¶ 69. HaloMD alone submitted 134,318 disputes in the second half of 2024. *Id.* ¶ 95. The IDREs deciding those disputes thus stand to gain tens of millions of dollars if, **and only if**, they reach an eligibility determination in HaloMD's favor.

3. The NSA Enables Providers to Obtain Radically Inflated Rates through IDR Payment Determinations.

Once the IDRE has determined that a dispute is eligible, it proceeds to make a payment determination. AC ¶ 65. The payment determination process is often described as "baseball-style" or "final offer" dispute resolution. *Id.* ¶ 66. The provider and health plan each submit payment offers to the IDRE, and the IDRE must select one of the two offers. *Id.*; *see also About Independent Dispute Resolution*, CMS, available at https://bit.ly/4qAcqiP. Neither the provider nor the payor gets to see the other's offer or dispute its validity. *See id.*

In choosing between offers, the NSA requires IDREs to consider factors including the Qualifying Payment Amount ("QPA") (an approximation of the plan's in-network rate for that service), and the provider's quality and market share. AC ¶ 104; 42 U.S.C. § 300gg-111(c)(5)(C). Although IDREs must issue a

written decision with each payment determination, the regulations do not require any specific explanation or reasoning. *See* 45 C.F.R. § 149.510(c)(4)(vi). In practice, the IDREs most often provide threadbare decisions providing only the dollar amount selected for the dispute and a boilerplate list of statutory factors considered, with no explanation as to why those factors weigh in favor of the ultimate determination. *See No Surprises Act Arbitrators Vary Significantly in Their Decision Making Patterns, supra.*

IDR payment determinations overwhelmingly favor providers. In the most recent reporting period, providers prevailed in 85 percent of IDR payment determinations. AC ¶ 105. During that period, prevailing offers exceeded the QPA **85 percent** of the time. *See id.* When providers prevail in IDR, they prevail at a median rate of over **three times the QPA**. *Id.* By accessing the IDR system, providers' median recovery is a rate more than 300% higher than the market rate for identical services provided by in-network providers. And as detailed below, through their scheme of flooding the NSA's IDR process with knowingly ineligible disputes, Defendants have been able to secure payments in some cases that are more than 2,000% higher than the rate set by law.

D. The Parties

BCBSGA is a Georgia corporation based in Atlanta. AC ¶ 11. It offers, *inter alia*, fully insured and self-funded employee health benefit plans and Medicare Advantage and Medicaid managed care plans. *Id.* ¶¶ 19-25.

Provider Defendants are Georgia corporations and subsidiaries or affiliates of Sound Physicians, which advertises itself as a multi-specialty practice group with over 4,000 physicians and practitioners responsible for managing approximately six percent of all acute medical hospitalizations. AC ¶¶ 12-15, 127. Provider Defendants use their parent company, Sound Physicians, and HaloMD to submit disputes to the IDR Portal. AC ¶ 132.

Defendant HaloMD is a Delaware company based in Texas that bills itself as "the premier expert in Independent Dispute Resolution." AC ¶ 120; https://halomd.com/. HaloMD works with Provider Defendants and other out-of-network providers to use its "advanced technology and AI-driven infrastructure," https://halomd.com/, to submit massive numbers of IDR disputes, a staggering portion of which it knows are ineligible. AC ¶¶ 120-26.

E. Defendants' Scheme

HaloMD and Provider Defendants formed the Sound Physicians Enterprise to exploit the IDR system and defraud BCBSGA and other health plans on a massive scale. AC ¶¶ 72-78. To conduct their "NSA Scheme," Defendants (1) use interstate wires to make repeated false statements and attestations of eligibility to BCBSGA, the Departments, and the IDREs; (2) strategically initiate massive numbers of simultaneous fraudulent IDR disputes to overwhelm the system's minimal safeguards; and (3) submit wildly inflated demands for payment that they could never receive outside the IDR

process. *Id.* Defendants frequently prevail on these disputes because (1) there is no meaningful opportunity for BCBSGA to contest their fabrications; and (2) IDREs are financially incentivized and permitted by regulation to simply accept the truth of Defendants' misrepresentations. *Id.* ¶¶ 64, 100-02; *supra.*

At the heart of this scheme, Defendants make false representations and attestations of eligibility in submissions to the IDR Portal. AC ¶¶ 79-89. This may be as simple as falsely representing that a patient had an employment-based group health plan when in fact they had a Medicare Advantage plan. *Id.* ¶ 87. And it may be as complicated as creating and uploading false documentation to misrepresent an extension of open negotiation periods. *Id.* ¶ 85. These are not isolated events; BCBSGA estimates that thousands of Defendants' disputes, including over half that reached a payment determination, are statutorily ineligible for IDR. *Id.* ¶¶ 73, 96-97, 102.

Defendants also exploit their volume of disputes to overcome the minimal safeguards in the IDR process. Before the NSA went into effect, the Centers for Medicare and Medicaid Services ("CMS") estimated that there would be about 22,000 IDR disputes annually. AC ¶ 92; *see* 86 Fed. Reg. 55,980, 56,068, 56,070 (Oct. 7, 2021). Instead, in 2024, there were almost 1.5 million disputes submitted. AC ¶ 93. HaloMD is among the three most prolific filers of IDR disputes; it initiated 134,318 disputes against health plans in the second half of 2024, an average of more than 746 disputes **per day**. *Id.* ¶ 95.

Defendants strategically overwhelm IDR safeguards by using automated AI tools to submit a massive number of disputes on a single day. *Id.* ¶¶ 6, 75. For example, on May 3, 2024, Defendants initiated 228 separate IDR disputes against BCBSGA, of which BCBSGA's records show more than 80 percent were ineligible for IDR. *Id.* ¶ 97. Defendants know that BCBSGA has only three business days to respond to their IDR initiation with any objections to eligibility. *See supra*. And they know that IDREs must complete the entire process and issue payment determinations within 30 business days. *See supra*. Defendants thus strategically flood the system to (1) overwhelm health plans' ability to identify and object to ineligible disputes and (2) prevent IDREs from meaningfully scrutinizing their disputes. AC ¶ 98.

The final element in Defendant's NSA Scheme is the part that makes it so rewarding; Defendants submit hugely inflated payment demands to the IDREs. AC ¶ 103. These demands far exceed what Provider Defendants could recover in a competitive market and often exceed Provider Defendants' "inflated," "non-market-based" billed charges. *Id.* ¶¶ 103, 108.

For example, on November 25, 2023, Provider Defendants provided services to an enrollee from one of BCBSGA's Medicaid plans. AC ¶ 135. Provider Defendants billed BCBSGA $630 for the service, and BCBSGA approved the claim to pay $46.97—the rate for the services prescribed by Medicaid regulations. *Id.* ¶ 136. Provider Defendants ultimately initiated an

IDR proceeding by falsely representing the nature of the plan involved and submitting a request for $1,250. *Id.* ¶¶ 138. Provider Defendants prevailed in the proceeding and thus were able to recover an amount (1) nearly twice what they actually billed and (2) more than 2,600% greater than what they were entitled to receive by law. *Id.* ¶ 140.

F. Defendants' Scheme Damages BCBSGA in Multiple Respects.

Defendants' scheme damages BCBSGA in multiple independent ways. **First**, every time Defendants submit one of their thousands of fraudulent disputes against BCBSGA to the IDR Portal, BCBSGA must pay a $115 administrative fee to HHS, which BCBSGA cannot recover even if the dispute is deemed ineligible. *Id.* ¶ 69. **Second**, BCBSGA must spend enormous amounts of time and money to identify and contest Defendants' thousands of fraudulent disputes. *Id.* ¶ 99. **Third**, through their fraudulent submissions, Defendants have (so far) obtained over $6 million in IDR awards against BCBSGA based on ineligible services. *Id.* ¶ 113. And **fourth**, for each award in Defendants' favor, BCBSGA must also pay hundreds of dollars in fees to the IDRE. *Id.* ¶¶ 69, 111, 178, 210, 225, 235. To date, BCBSGA has incurred over $900,000 in IDRE fees based on Defendants' fraudulently obtained awards. *Id.* ¶ 114.

G. Causes of Action

BCBSGA asserts 12 causes of action against all Defendants for violations of federal RICO (Counts I and II) and the Georgia RICO statue (Count III); common law fraud (Count IV); negligent misrepresentation (Count V); statutory fraud (Count VI); theft by deception (County VII); civil conspiracy (Count VIII); violations of GUDTPA (Count IX); vacatur of IDR Awards (in the alternative) (Count X); and violations of ERISA (Count XI).

LEGAL STANDARD

In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in the light most favorable to the plaintiff. *See Renfroe v. Nationstar Mortg., LLC*, 822 F.3d 1241, 1243 (11th Cir. 2016). Under notice pleading, a plaintiff need only give a defendant fair notice of its claim and the grounds upon which they rest. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007). A "complaint must raise a right to relief above the speculative level, but it need not contain 'detailed factual allegations.'" *Renfroe*, 822 F.3d at 1244 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007)). A complaint alleging fraud must additionally satisfy Rule 9(b)'s pleading standard. Rule 9(b) requires the plaintiff to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). In the case of "prolonged multi-act schemes," the particularity requirement is "relaxed," and the plaintiff need only allege "some examples of actual false claims to lay

a complete foundation for the rest of his allegations." *U.S. ex rel. Clausen v. Lab. Corp. of Am., Inc.,* 290 F.3d 1301, 1314 n. 25 (11th Cir. 2002).

ARGUMENT

I. HaloMD's Jurisdictional Arguments Fail.

A. BCBSGA Pleads Standing.

BCBSGA has standing to sue Defendants for their NSA Scheme. As detailed in the AC: (i) Defendants submitted thousands of fraudulent statements to the IDR Portal, and (ii) as a direct and immediate consequence, BCBSGA incurred millions of dollars of liability for fees and awards based on ineligible disputes, in addition to the operational expenses and burden of responding to Defendants' misrepresentations. *E.g.*, AC ¶¶ 4, 9, 73, 97-99, 111-14. BCBSGA pleads standing because it: (1) "suffered an injury in fact" that is (2) "fairly traceable to" Defendants' conduct, and (3) "is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

Injury In Fact: Standing only requires "general factual allegations of injury." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The AC alleges concrete injuries (with demonstrative examples) in the form of BCBSGA's incurring (1) IDR and administrative fees and/or awards for ineligible disputes, and (2) the operational burden and expense to address Defendants' false submissions. *E.g.*, AC ¶¶ 4, 9, 73, 97-99, 111. BCBSGA's "lost time, money, and

peace" are "garden-variety injuries in fact [.]" *See Walters v. Fast AC, LLC*, 60 F.4th 642, 649 (11th Cir. 2023). BCBSGA thus pleads injuries in fact.

Traceability: "Article III requires no more than *de facto* causality," and "traceability is satisfied" if BCBSGA's injury was "likely attributable *at least in part*" to Defendants' actions. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019) (emphases in original); *see also MacPhee v. MiMedx Grp., Inc.*, 73 F.4th 1220, 1239–40 (11th Cir. 2023) ("[T]raceability . . . is less stringent than proximate cause."). The AC explains that BCBSGA's injuries (*i.e.*, payment of IDR and administrative fees and/or awards for ineligible disputes initiated by Defendants, and the burden and expense of addressing Defendants' false submissions) are "likely attributable at least in part" to Defendants' actions.

HaloMD falsely suggests that BCBSGA only alleges damages arising from IDR awards (HaloMD Br. 14-15). But as soon Defendants submit a fraudulent dispute through the IDR Portal, BCBSGA must (1) spend time and money to identify the fraud and submit an objection to eligibility (*e.g.*, AC ¶¶ 142, 145, 149), and (2) pay a $115 administrative fee that it cannot recover even if "the IDRE determines that the dispute does not qualify for IDR[.]" *Id.* ¶ 69. BCBSGA incurs these damages even before an IDRE is selected.

HaloMD also disputes standing to seek damages arising from IDRE awards by arguing that it is the IDREs, rather than HaloMD, that ultimately make eligibility determinations and issue the awards. HaloMD Br. 15. But

"standing is not defeated merely because the alleged injury can be fairly traced to the actions of both parties and non-parties." *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 148 F.3d 1231, 1247 (11th Cir. 1998). And "[a] plaintiff [] need not show (or, as here, allege) that the defendant's actions are the very last step in the chain of causation." *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1126 (11th Cir. 2019) (quoting *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997)) (parentheses in original).

As reflected in the AC, the IDRE awards are only possible because of Defendants' misrepresentations. If Defendants accurately answered questions on the IDR Portal, they would not be permitted to even initiate an IDR dispute. AC ¶ 57 ("To push through an ineligible dispute, the initiating party must make affirmative false statements, representations, and attestations regarding the eligibility for IDR."); *id.* ¶ 52 (otherwise "the IDR Portal will not permit the initiating party to proceed and seek payment for the service"). And in the absence of Defendants' misrepresentations, IDREs would have no basis to resolve eligibility disputes in their favor and proceed to issue awards. The fact that "IDREs still *could* have decided the items and services were ineligible" is thus irrelevant. HaloMD Br. 16 (emphasis added). Defendants cannot absolve themselves of fraud by blaming others for not detecting their fraud.

Redressability: BCBSGA's past injuries are clearly "redressable in the form of an award of damages." *Fisher v. PNC Bank, N.A.*, 2 F.4th 1352, 1359

(11th Cir. 2021). BCBSGA's injuries arise directly from Defendants' submitting thousands of fraudulent attestations. *See supra*. And an order enjoining Defendants' scheme will redress future injury so long as it "reduce[s] to some extent" the likelihood of future harm. *See Massachusetts v. EPA*, 549 U.S. 497, 526 (2007).[4] HaloMD's argument that BCBSGA "asserts a generalized grievance with the IDR process itself that only Congress or CMS can address" (HaloMD Br. 17) mischaracterizes the AC and remarkably seeks to blame others for failing to prevent its fraudulent NSA Scheme.

B. BCBSGA Pleads Personal Jurisdiction over HaloMD.

Under controlling law, HaloMD is subject to personal jurisdiction in this district by virtue of having been served under two statutes—RICO and ERISA—that provide for nationwide service of process. *See, e.g.*, *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 942 (11th Cir. 1997) ("When a federal statute provides for nationwide service of process, it becomes the statutory basis for personal jurisdiction."); *see also Reynolds v.*

[4] HaloMD claims that BCBSGA should have pursued a new process—released **after** BCBSGA filed suit—to petition to reopen each of their thousands of IDR proceedings. HaloMD Br. 16, n.15. The cited guidance states this process "is not intended to have the force of law." *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties*, CMS, June 2025, at 1-2. The new process does not state that it provides an exclusive remedy, and it could not remedy or enjoin Defendants' NSA Scheme.

Behrman Cap. IV L.P., 988 F.3d 1314, 1325 (11th Cir. 2021) (same). HaloMD does not even address (much less dispute) this controlling principle.

To avoid jurisdiction under these statutes, HaloMD has the burden to show that "their liberty interests actually have been infringed," and "jurisdiction in the forum will make litigation so gravely difficult and inconvenient that they unfairly are at a severe disadvantage[.]'" *Managed Care Advisory Grp., LLC v. CIGNA Healthcare, Inc.*, 939 F.3d 1145, 1158 (11th Cir. 2019) (internal citation omitted); *see also Thomas v. Brown*, 504 F. App'x 845, 847 (11th Cir. 2013) (the defendant must carry its burden "through affidavits, documents, or testimony"). HaloMD makes no attempt to meet this burden and thus waived any challenge to jurisdiction under RICO and ERISA. The Court also has pendent jurisdiction over HaloMD for BCBSGA's state law claims by virtue of its jurisdiction through RICO and ERISA. *See Koch v. Royal Wine Merch., Ltd.*, 847 F. Supp. 2d 1370, 1374 (S.D. Fla. 2012); *see also Carter v. Companion Life Ins.*, 18-cv-0350, 2019 WL 11637304 (N.D. Ala. Feb. 22, 2019).

In addition to pendent jurisdiction, Georgia's long-arm statute embraces "the concept of conspiracy jurisdiction." *Hyperdynamics Corp. v. Southridge Cap. Mgt.*, LLC, 305 Ga. App. 283, 293 (2010) (internal citation omitted). Accordingly, "the in-state acts of a resident co-conspirator may be imputed to a nonresident co-conspirator so as to satisfy the specific contract requirements of the Georgia Long Arm Statute." *Id.* at 294. Given the AC's conspiracy

allegations, all of the in-state acts by Provider Defendants (Georgia corporations) are imputed to HaloMD as well.

II. Defendants Cannot Avoid Judicial Review of Their Fraud.

Defendants' motions must accept as true the AC's allegations. *Renfroe*, 822 F.3d at 1243. Yet Defendants consistently ignore them and seek dismissal based on plainly inapplicable statutory and doctrinal grounds. Defendants: (1) misquote the NSA's Judicial Review Provision to argue that BCBSGA may only file a petition to vacate IDR awards via the Federal Arbitration Act ("FAA"), which is not true; (2) claim they are immune from liability under *Noerr-Pennington*, which does not apply to IDR proceedings or to factual misrepresentations; and (3) raise the affirmative defense of collateral estoppel without the necessary supporting proof or the ability to meet its elements. The NSA, *Noerr-Pennington*, and collateral estoppel do not negate BCBSGA's allegations or immunize Defendants' NSA Scheme.

A. Defendants' Judicial Review Provision Arguments Fail on Multiple Grounds.

Defendants' arguments that the NSA's Judicial Review Provision bars BCBSGA's claims fail for three independent reasons. **First**, the Judicial Review Provision applies solely to IDRE **payment** determinations; it does not apply to IDRE **eligibility** determinations. 42 U.S.C. § 300gg-111(c)(5)(E). **Second**, the NSA does not incorporate the FAA's procedures—much less

impose them as an exclusive remedy—and BCBSGA has pleaded "a case described in" 9 U.S.C. § 10(a)(1) and (a)(4) to support "judicial review." **Third**, BCBSGA's claims are not a collateral attack on IDR determinations; BCBSGA asserts the proceeding should never have taken place in the first instance.

1. The NSA's Judicial Review Provision Does Not Apply to Eligibility Decisions.

Per the NSA's plain language, the Judicial Review Provision applies solely to IDRE **payment** determinations. 42 U.S.C. § 300gg-111(c)(5)(E). It does nothing to limit judicial review of IDRE **eligibility** decisions. *See id.*

To determine the scope of review under a statute, "we begin with the strong presumption in favor of judicial review," which can only be overcome by "clear and convincing indications that Congress meant to foreclose review." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 370 (2018) (internal citation omitted); *see also Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (collecting cases). If there is any ambiguity at all, "we adopt the reading that accords with traditional understandings . . . that executive determinations generally are subject to judicial review.'" *Moreno v. Wolf*, 558 F. Supp. 3d 1357, 1365 (N.D. Ga. 2021) (Thrash, J.) (*quoting Kucana v. Holder*, 558 U.S. 233, 252–53 (2010)).

This presumption is so deeply "embedded in the law that it applies even when determining the scope of statutory provisions specifically designed to limit judicial review." *Make The Rd. New York v. Wolf*, 962 F.3d 612, 624 (D.C.

Cir. 2020); *see also El Paso Natural Gas Co. v. United States*, 632 F.3d 1272, 1276 (D.C. Cir. 2011) ("Th[e] presumption applies even where, as here, the statute expressly prohibits judicial review—in other words, the presumption dictates that such provisions must be read narrowly.").

There is no indication—much less "clear and convincing indications"—that Congress intended to bar judicial review of IDRE eligibility determinations. The NSA states that "[a] determination of a certified IDR entity **under subparagraph (A)** . . . 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) (emphasis added). The only "determination" an IDRE makes under subparagraph (A) is its decision to "select one of the offers submitted . . . to be the amount of payment." *Id.* § 300gg-111(c)(5)(A). The text of the Judicial Review Provision only encompasses this "Payment Determination" and not the wholly distinct assessment of IDR eligibility. Indeed, 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. *See id.*

In asking the Court to apply the Judicial Review Provision to IDRE **eligibility** determinations, Defendants omit critical statutory language from the NSA. Provider Defendants argue that "the NSA states that a 'determination of a certified IDR entity . . . shall not be subject to judicial

review[.]'" Provider Br. 23. HaloMD argues that "binding 'IDR awards' are expressly 'not . . . subject to judicial review.'" HaloMD Br. 6. Both ignore that the Judicial Review Provision only applies to "[a] determination of a certified IDR entity **under subparagraph (A)**" (*i.e.*, a payment determination). 42 U.S.C. § 300gg-111(c)(5)(E) (emphasis added). This omission is material, and it defeats their arguments.

Congress has created an incredibly narrow restriction on judicial review that applies exclusively to IDRE payment determinations "under subparagraph (A)." *Id.* § 300gg-111(c)(5)(E). Had Congress intended to preclude judicial review of all decisions by an IDRE under the NSA, it would have done so. Indeed, Congress did precisely that in the more expansive judicial review provisions of other statutes cited by Provider Defendants (Provider Br. 24), which state that "[n]o determination, finding, action, or omission under this chapter shall be subject to judicial review." *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 561 (9th Cir. 2019) (Congressional Review Act); *Montanans for Multiple Use v. Barbouletos*, 568 F.3d 225, 229 (D.C. Cir. 2009) (National Forest Management Act).

Defendants' citation to agency regulations (HaloMD Br. 23; Provider Br. 19) does not alter the analysis. These regulations confirm that any limitation on judicial review does not apply to IDRE eligibility decisions. Under 45 C.F.R. § 149.510(c)(4)(vi) ("Effects of Determination"), HHS specified that "[a]

determination made by a certified IDR entity **under paragraph (c)(4)(ii)** of this section . . . is not subject to judicial review [.]" (emphasis added). The sole determination described under (c)(4)(ii) is the IDRE's decision to "[s]elect as the out-of-network rate for the qualified IDR item or service one of the offers submitted" by the parties. The language addressing decisions on eligibility appears in a different provision: paragraph (c)(1)(v) ("[T]he certified IDR entity selected must . . . determine whether the Federal IDR process applies."). Under the plain language of both the NSA and its implementing regulations, the limitation on judicial review does not apply to any decision regarding **eligibility**, the decision at the core of Defendants' fraud.[5]

Congress's decision to preserve judicial review over eligibility for the IDR process is both common sense and consistent with a long line of precedent. Even for contractual arbitration—where, unlike here, the parties have consented to the procedure—the question of arbitrability is still "undeniably an issue for judicial determination. Unless the parties clearly and unmistakably provide otherwise, the question of whether [and what] the parties agreed to arbitrate is to be decided by the court, not the arbitrator." *See*

---

[5] HHS could not, in any event, use a regulation to expand a statutory bar on judicial review. *See Kucana*, 558 U.S. at 248 ("If Congress wanted the jurisdictional bar to encompass decisions specified… by regulation along with those [specified] by statute . . . Congress could easily have said so.").

AT&T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 649 (1986); *Coinbase, Inc. v. Suski*, 602 U.S. 143, 149 (2024) (same); *JPay, Inc. v. Kobel*, 904 F.3d 923, 930 (11th Cir. 2018) (same). Consistent with this principle, the NSA does not direct IDREs to make unreviewable decisions about whether disputes are eligible for IDR in the first place.

2. The NSA Does Not Incorporate the FAA's Procedures Much Less Impose Them as an Exclusive Remedy.

Defendants' Judicial Review Provision arguments fail for a second independent reason: the NSA does not incorporate any of the FAA's procedural provisions, much less impose them as exclusive remedies. *See Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1082 (M.D. Fla. 2023) ("The FAA's procedural law does not govern appeals of NSA IDR awards.").

The NSA provides that, "that "[a] determination of a certified IDR entity under subparagraph (A) . . . 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 [*i.e.*, the FAA]." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). The cited paragraphs outline four circumstances in which a court may vacate an arbitration award. As the court in *Med-Trans* noted:

> Although this explains the grounds upon which a party may challenge an award, it does not discuss how to raise this challenge. In the FAA, those rules are found in other sections, such as §§ 6, 9, and 12 of the FAA. But the NSA does not invoke or discuss §§ 6, 9, 12, or any other sections of the FAA . . . [C]ourts must presume that a legislature says in a statute what it means and means in a

> statute what it says there. Congress invoked four paragraphs of the FAA to describe "cases" where an IDR decision may be "subject to judicial review"—nothing more. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). The FAA's procedural requirements for vacating an award . . . are not incorporated.

700 F. Supp. 3d at 1083 (internal citations omitted); *see also Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 276 (5th Cir. 2025) ("Congress chose not to incorporate § 9 [governing award confirmation] into the NSA.").[6]

In contrast, Congress expressly incorporated the FAA procedures into multiple other statutes, either by listing out each provision or incorporating all of Title 9. *See, e.g.*, 5 U.S.C. § 580(c) (government employment disputes) ("A final award. . . may be enforced pursuant to sections 9 through 13 of title 9."); 29 U.S.C. § 1401 (ERISA) (awards shall be enforced "under Title 9"); 35 U.S.C. § 294 (patent disputes) ("[A]wards by arbitrators and confirmation of awards shall be governed by title 9 . . . ."); 41 U.S.C. § 7107 (agency contract disputes) ("[C]onfirmation of awards shall be governed by title 9.").

Defendants' request to read the FAA's procedures into the NSA violates fundamental principles of statutory interpretation:

---

[6]Provider Defendants misrepresent *Guardian Flight* as holding that "[t]he exclusive means to challenge an IDR award is to seek vacatur under the FAA." Provider Br. 24. But that language appears nowhere in that decision, which (1) only addressed a request for confirmation and (2) did not even apply the FAA's procedural provisions to that request given the NSA's very narrow incorporation of FAA standards. 140 F.4th at 276.

> It is a fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts. To do so is not a construction of a statute, but, in effect, an enlargement of it by the court. Atextual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision.

Rotkiske v. Klemm, 589 U.S. 8, 14 (2019) (citations and internal quotations omitted); *accord Turtle Island Restoration Network v. Evans*, 284 F.3d 1282, 1296 (Fed. Cir. 2002) ("When Congress omits from a statute a provision found in similar statutes, the omission is typically thought deliberate.").

The NSA's Judicial Review Provision "explains the grounds upon which a party may challenge an award, [but] it does not discuss"—much less limit—how a party may seek "judicial review." *See Med-Trans Corp.,* 700 F. Supp. 3d, 1082-83. Applying the plain language of the NSA, BCBSGA may seek "judicial review"[7] of an IDR determination in any "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)(II).

This expressly includes the underlying IDR proceedings, because "the arbitrators exceeded their powers" (9 U.S.C. § 10) by resolving disputes that were ineligible for IDR. The NSA only permits IDREs to issue payment determinations for a "qualified IDR item or service." 42 U.S.C.A. § 300gg-

---

[7]"[T]he phrase 'judicial review' has a judicially settled meaning," which includes a court's power to "review [] a lower court's or an administrative body's factual or legal findings." *Cardiosom, L.L.C. v. United States*, 115 Fed. Cl. 761, 774-75 (2014) (internal quotation omitted).

111(c)(5)(A). BCBSGA has pleaded that IDREs issued thousands of payment determinations for services that did not constitute a "qualified IDR item or service." *Id*. The IDREs thus decided an issue that "they lacked the authority to decide," meeting the requirements of a "case described in" 9 U.S.C. § 10(a)(4). *Kahn v. Smith Barney Shearson, Inc.*, 115 F.3d 930, 933 (11th Cir. 1997).

BCBSGA may also seek "judicial review" of each IDR dispute because "the award was procured by . . . fraud" (9 U.S.C. § 10(a)(1)) through Defendants' false attestations of eligibility. *See Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383-84 (11th Cir. 1988) ("perjury materially related to an issue in the arbitration" is sufficient).[8] Unlike the cases cited by Provider Defendants (Provider Br. 31.),[9] BCBSGA **has** adequately pleaded fraud. And while BCBSGA did object to eligibility in the IDR disputes, there is no indication that "the arbitrators had all the material information before them" and actually addressed the disputed misrepresentation. *Scott v. Prudential Sec., Inc.*, 141 F.3d 1007, 1015, n.16 (11th Cir. 1998). The IDREs did not issue written eligibility decisions at all, much less decisions addressing any claims of fraud.

---

[8] HaloMD's Fifth Circuit authority supports this standard. *See Guardian Flight*, 140 F.4th at 621 ("willful intent to give false testimony") (internal citation omitted) (cited at HaloMD Br. 41).

[9] *See Guardian Flight*, 140 F.4th at 622 (plaintiff failed to plead facts supporting inference that that misstatements were intentional); *Med-Trans Corp.*, 700 F. Supp. 3d at 1087 (finding vague allegations failed to comply with Rule 9(b) and granting leave to amend).

3. BCBSGA's Claims Are Not a Collateral Attack on IDR Determinations.

Defendants' Judicial Review Provision arguments also fail because BCBSGA is not conducting a "collateral attack" (Provider Br. 36), on any IDR awards. To decide whether a claim constitutes a collateral attack, courts "look to the requested relief and its relationship to the alleged wrongdoing and purported harm." *Texas Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 489 (5th Cir. 2020). If plaintiff's damages are simply the "award it believes it should have received," then it is a collateral attack. *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 750 (5th Cir. 2008).

Defendants' cases provide examples of collateral attacks that stand in stark contrast to this case. In *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, the court found that the plaintiff's objective "in [the] damages suit [was] to rectify the alleged harm she suffered by receiving a smaller arbitration award than she would have received." 205 F.3d 906, 910 (6th Cir. 2000). Similarly, in *Freeman v. Citibank, N.A.*, the plaintiff claimed injury based on a tribunal's failure to award her damages in the arbitration. No. 3:14-cv-00067, 2015 WL 13777266, at *24 (N.D. Ga. Jan. 20, 2015).

Here, however, BCBSGA is not seeking damages that it sought but failed to procure in the underlying IDR proceedings. Instead, BCBSGA is challenging Defendants' NSA Scheme—which is far broader than any individual IDR

proceeding—and seeks relief that it could not have obtained either in the IDR proceedings or via its alternative claim for vacatur (Count X).

For example, BCBSGA seeks "[i]njunctive relief prohibiting Defendants from continuing to submit false attestations" to prevent future damages arising from their scheme. AC at 77. Defendants have not cited any legal authority that could possibly preclude this forward-looking relief, which is not available in either IDR proceedings or through vacatur.

Likewise, BCBSGA seeks categories of damages that were neither recoverable in the IDR process nor the result of any IDR determination. These include: (1) time and money spent addressing Defendants' fraudulent submissions, AC ¶ 99, and (2) IDR administrative fees paid to HHS, which are not recoverable under any circumstances, *id.* ¶ 69. BCBSGA incurred those damages even in the proceedings in which it prevailed. BCBSGA could not recover either category of damage in IDR or through vacatur, such that its claims are not a collateral attack on those proceedings.

4. In the Alternative, BCBSGA Pleads a Claim for Vacatur (Count XI)

In the alternative to its common law and statutory claims, BCBSGA has also asserted a claim for vacatur. AC ¶¶ 250-54 (Count X). Defendants seek dismissal of that claim for failure to comply with the procedural requirements of the FAA (*see* Provider Br. 24-28; Halo Br. 40-42). Defendants argue that

"[t]he rules of notice pleading do not apply" to this claim, and that (1) BCBSGA is required under FAA § 6 to seek vacatur through a "motion to vacate" supported by records and evidence from the underlying IDR proceedings and (2) it must do so "within three months of the award[s]" under FAA § 12. But as detailed in Section II.A.2, "the NSA does not invoke or discuss §§ 6, 9, 12, or any other sections of the FAA" other than § 10. *Med-Trans*, 700 F. Supp. 3d at 1083. These provisions and their procedural requirements do not apply.

Defendants also argue that BCBSGA's grounds for vacatur do not satisfy the substantive requirements of 9 U.S.C. § 10(a). For the reasons stated in Section II.A.2, those arguments fail, as well.

B. The *Noerr-Pennington* Doctrine Does Not Immunize Defendants from Liability for Their Fraudulent Scheme.

The AC alleges that Defendants defrauded BCBSGA by initiating thousands of IDR proceedings with false attestations of eligibility to obtain millions of dollars in IDR determinations for patently ineligible disputes. Defendants argue that they were merely "engaging in activity protected by the First Amendment." HaloMD Br. 20. Defendants' audacious attempt to clothe their fraud in constitutional armor fails for two simple reasons. **First**, disputes submitted for IDR proceedings "before a private organization do not implicate the First Amendment," and thus applying *Noerr* immunity would be "far-removed from the constitutional foundation for the doctrine." *Ford Motor Co.*

v. Nat'l Indem. Co., 972 F. Supp. 2d 862, 868-69 (E.D. Va. 2013). **Second**, even in public proceedings in an actual court, factual "[m]isrepresentations . . . do not enjoy *Noerr* immunity." *St. Joseph's Hosp., Inc. v. Hosp. Corp. of America*, 795 F.2d 948, 955 (11th Cir. 1986).

1. *Noerr-Pennington* Does not Apply to Defendants' Fraud in a Private Commercial Dispute.

Noerr immunity does not apply to Defendants' false statements as part of a private dispute resolution process before private companies (*i.e.*, the IDREs). *Ford Motor Co.*, 972 F. Supp. 2d at 868-69. *Noerr* immunity is premised on the First Amendment's Petition Clause. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014). The Supreme Court created this doctrine to immunize legitimate efforts to lobby the government that might otherwise result in liability under antitrust and labor laws. *See, e.g.*, *BE & K Constr. Co. v. N.L.R.B.*, 536 U.S. 516, 525-27 (2002).[10] *Noerr* does not apply where "the government acts in a merely ministerial or non-discretionary capacity in direct reliance on the representations made by

[10] The Eleventh Circuit has not expanded the doctrine to areas of law outside labor and antitrust. *See SmileDirectClub, LLC v. Battle*, 4 F.4th 1274, 1281 (11th Cir. 2021) (*Noerr-Pennington* is an antitrust doctrine "said to spring directly from a construction of the Sherman Act") (internal quotation omitted). Defendants have not cited a single authority applying *Noerr* immunity to statements made in a purely financial dispute between private entities.

private parties." *In re Buspirone Pat. Litig.*, 185 F. Supp. 2d 363, 369 (S.D.N.Y. 2002).

The AC alleges that Defendants submit false attestations of eligibility to obtain more money from BCBSGA for Medicare, Medicaid, and other ineligible disputes in non-public IDR proceedings before private IDREs. AC ¶¶ 1-4, 72-89. Such statements "before a private organization do not implicate the First Amendment." *Ford Motor Co.*, 972 F. Supp. 2d at 868-69.

Defendants claim that *Noerr-Pennington* can apply to a "public or quasi-public arbitration forum or process." Provider Br. 44 (citing *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*, 189 F. Supp. 2d 385, 392 (E.D. Va. 2002)).[11] *Eurotech* applied *Noerr-Pennington* to a single dispute brought under the World Intellectual Property Organization's ("WIPO") Uniform Domain Name Dispute Resolution ("UDRP") Policy. WIPO is a "quasi-public organization that is an integral part of the United Nations." 189 F. Supp. 2d at 392. WIPO UDRP proceedings involve disputes over the public registration of Internet domain names with complaints, arbitration records, and published

[11] *USS-POSCO Indus. v. Contra Costa Cnty.* is inapposite. That case applied *Noerr-Pennington* to a policy campaign involving eight labor arbitrations, 36 lawsuits, and extensive lobbying activities. 31 F.3d 800, 804, 810 n.9. (9th Cir. 1994). As the Supreme Court recognized, the immunity in *USS-POSCO* turned on the unions' "lobbying officials or petitioning courts and agencies . . . ." *BE & K Constr.,* 536 U.S. at 521.

reasoned decisions. *See id.*; *WIPO Guide to the UDRP*, WIPO, available at https://bit.ly/3KWfeGA.

WIPO UDRP proceedings bear no resemblance to IDR. IDREs are not a "quasi-public organization that is an integral part of" a public government agency; they are faceless private companies that must process thousands of IDR disputes each day. Moreover, IDR proceedings do not involve matters of public concern (*e.g.*, public registration of Internet domain names) or result in published reasoned decisions; they are purely private commercial disputes from out-of-network providers seeking more money from health plans for their services, resulting in privately issued payment determinations with "minimal justification or rationale." *See supra* at 9-10. Because IDR proceedings do not implicate First Amendment concerns, *Noerr-Pennington* does not apply.

2. *Noerr-Pennington* Does Not Immunize Fraud in Adjudicatory Proceedings.

Regardless of whether *Noerr-Pennington* could apply to IDR proceedings, the doctrine cannot immunize Defendants from liability for their thousands of fraudulent attestations of eligibility. "*Noerr-Pennington* does not immunize petitioning activity consisting of false statements . . . ." *Kinsman v. Winston*, No. 6:15-cv-696-Orl-22GJK, 2015 WL 12839267, at *7 (M.D. Fla. Sept. 15, 2015); *see also Drummond Co., Inc. v. Collingsworth*, 2:15-cv-506, 2024 WL 5056621, at *14 (N.D. Ala. Dec. 10, 2024) (*Noerr-Pennington* does not

immunize "fraud or deliberate misrepresentations"). Under controlling law, Defendants' misrepresentations "do not enjoy *Noerr* immunity." *St. Joseph's,* 795 F.2d at 955. And the fact that Defendants prevailed in some IDR disputes (HaloMD Br. 22) is immaterial. "[A]lthough successful petitioning activity may not, as a general matter, be deemed a sham, the fraud exception can remove that immunity if success is achieved by means of intentional falsehoods." *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 843 (7th Cir. 2011).[12]

C. Collateral Estoppel Does Not Apply to BCBSGA's Claims.

Finally, HaloMD does not and cannot establish collateral estoppel, a doctrine that is incompatible with IDR procedures and BCBSGA's allegations. No IDRE has (or can) evaluate BCBSGA's allegations involving Defendants' submission of thousands of knowingly ineligible IDR proceedings against BCBSGA. Instead, for each individual IDR proceeding, an IDRE "must review the information submitted in the notice of IDR initiation" with the provider's attestation of eligibility "to determine whether the Federal IDR process applies." AC ¶ 64; 45 C.F.R. § 149.510(c)(1)(v). Nothing in the NSA regulations requires an IDRE to conduct hearings, consider a health plan's factual

---

[12] This doctrine is distinct from the "sham litigation" exception to *Noerr-Pennington*. *See St. Joseph's Hosp.*, 795 F.2d at 955 (explaining that if the district court had correctly determined that "deliberate misrepresentations" made *Noerr-Pennington* inapplicable it would not have had to engage in an analysis of the sham exception).

objections, or issue decisions (written or otherwise) describing their rationale. *See id.* IDREs also have a vested financial interest in finding a dispute is eligible and proceeding to a payment determination. AC ¶¶ 70, 100. Such eligibility "decisions" do not estop BCBSGA's AC.

As "[t]he party seeking to invoke collateral estoppel," HaloMD "bears the burden of proving that the necessary elements have been satisfied." *See Hunt v. Nationstar Mortg.*, No. 21-10398, 2022 WL 1701487, at *4 (11th Cir. May 27, 2022). Collateral estoppel is an affirmative defense; if raised on a motion to dismiss, the "motion should not be granted unless sufficient evidence of the precluding decision is available in the record to justify the application of the defense." *N. Georgia Elec. Membership Corp. v. City of Calhoun, Ga.*, 989 F.2d 429, 432 n.2 (11th Cir. 1993) (citation omitted). Here, HaloMD does not and cannot submit evidence of any underlying eligibility "decision" to support its assertion of collateral estoppel for the thousands of IDR proceedings at issue in this case. Thus, its argument fails at the outset.

HaloMD also cannot establish the elements of collateral estoppel. The doctrine requires HaloMD to show that:

> (1) the issue in the current and prior actions is identical; (2) the issue was actually litigated in the prior suit; (3) the determination of the issue was critical and necessary to the judgment in the prior action; and (4) the party against whom the doctrine is invoked had a full and fair opportunity to litigate the issue in the prior proceeding.

Wood v. Sellers, No. 21-13359, 2022 WL 2388428, at *2 (11th Cir. July 1, 2022).[13]

1. IDREs Did Not Determine Whether Defendants Engaged in Fraud, and the Issues are Not Identical.

IDREs' unwritten eligibility "decisions" are limited in scope; they "review the notice of IDR initiation" with the provider's attestation of eligibility "to determine whether the Federal IDR process applies." AC ¶ 64; 45 C.F.R. § 149.510(c)(1)(v). The issue before this Court is categorically different: whether Defendants made thousands of fraudulent submissions to the IDR Portal as part of a widespread scheme to defraud BCBSGA and other insurers. While both issues arise from the same IDR submissions, they are "two, quite separate inquiries." *See United States v. Carpentieri*, 23 F. Supp. 2d 433, 435–36 (S.D.N.Y. 1998) (distinguishing, for the purposes of a statute barring judicial review, between two questions: (1) "whether [defendant] falsified his initial employment papers and his claim forms for FECA" and (2) whether the defendant's "submission, if not fraudulent, establishes eligibility for benefits").

[13]The lone case HaloMD cites bears no relevance to this case. In *Freecharm Ltd. v. Atlas Wealth Holdings Corp.*, the party against whom estoppel was enforced participated in evidentiary hearings on the claims at issue, "conceded at oral argument" that the issues in both actions were identical, and there was no dispute that he had "every opportunity to litigate these issues," and received a reasoned decision directly addressing the issues., 499 F. App'x 941, 942, 944 (11th Cir. 2012).

2. Defendants' Fraud Was Not Actually Litigated or Necessary to the IDRE Eligibility Decisions.

Because IDREs have no obligation to verify Defendants' statements, consider the nature and substance of BCBSGA's objections, or address Defendants' fraud, that issue was "not 'actually litigated' and could not possibly have been 'critical and necessary' to the judgment." *CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*, 327 F.3d 1309, 1318 (11th Cir. 2003).

3. BCBSGA Did Not Have a Full and Fair Opportunity to Litigate Defendants' Fraud.

Collateral estoppel also does not apply where, as here, "there is reason to doubt the quality, extensiveness, or fairness of the procedures followed in prior litigation." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 (1982).

First, to establish the requisite fairness in a prior proceeding, there must have been "an impartial fact finder." *See Thompson v. Norfolk S. Ry. Co.*, 13-cv-1555-CC, 2015 WL 1509483, at *8 (N.D. Ga. Mar. 31, 2015). Under the NSA, however, IDREs only collect payment if disputes are deemed eligible. AC at ¶¶ 70, 100. Under the "the judicial-impartiality requirement," "a judge's income can't directly depend on how he decides matters before him." *Harper v. Pro. Prob. Servs. Inc.*, 976 F.3d 1236, 1241 (11th Cir. 2020) (because defendant received "its $40 monthly fee only as long as a probationer remained on probation . . . it couldn't determine probation sentencing matters impartially").

Here, IDREs must choose either (1) to find a dispute eligible, thus

entitling them to compensation under the NSA or (2) to find a dispute ineligible, thus precluding any compensation for their services. AC ¶¶ 70, 100. Again, HaloMD alone submitted 134,318 disputes in the second half of 2024. *Id.* ¶ 95. The IDREs deciding those disputes stood to earn tens of millions of dollars if, **and only if**, they decided eligibility in HaloMD's favor. Because IDREs have a direct and immediate financial stake in the outcome of their eligibility decisions, they cannot possibly be deemed impartial fact finders for the purpose of collateral estoppel.

Impartiality aside, collateral estoppel "may apply to some administrative proceedings but not others, and each situation calls for careful examination." *Bajjani v. U.S. Small Bus. Admin.*, 824 F. App'x 725, 732 (11th Cir. 2020) (addressing claim preclusion) (internal citation omitted). In particular, "[i]f the formality of an administrative proceeding is sufficiently diminished, [collateral estoppel] may not apply." *Travieso v. Fed. Bureau of Prisons, Warden*, 217 F. App'x 933, 936 (11th Cir. 2007) (addressing claim preclusion); *Lake Lucerne Civic Ass'n, Inc. v. Dolphin Stadium Corp.*, 878 F.2d 1360, 1367 (11th Cir. 1989) (same); *Hanna v. WCI Communities, Inc.*, 348 F. Supp. 2d 1322, 1331 (S.D. Fla. 2004) (OSHA proceeding lacked adequate procedures to apply collateral estoppel effect).

Here, Congress deliberately created IDR as an informal process to efficiently resolve relatively low-value disputes without the need for legal

counsel. *See supra* at 4-5. There is no discovery, no evidentiary requirements, no hearings, no testimony, and no procedures to even view—much less verify or rebut—an opposing party's submission. There are no opportunities for testing evidence or cross examination, no briefings, and no hearings of any kind. *See id.* Collateral estoppel does not apply where, as here, the procedures in the prior proceeding were "tailored to the prompt, inexpensive determination of small claims" that would be "wholly inappropriate to the determination of the same issues when presented in the context of a much larger claim." Restatement (Second) of Judgments § 28 (1982);[14] *Staub v. Nietzel*, No. 22-5384, 2023 WL 3059081, at *6 (6th Cir. Apr. 24, 2023) (courts may refuse to apply estoppel where "an earlier action involved relaxed rules of evidence, a system to quickly determine [claims], and concerned minimal amounts of damages"); *see Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 332 (1979) (collateral estoppel should not apply if there are "procedural opportunities available" in the second suit "that were unavailable in the first . . . [and] might be likely to cause a different result"); *Grimes v. BNSF Ry. Co.*,

[14] In deciding whether to apply collateral estoppel, the Supreme Court "regularly turns to the Restatement (Second) of Judgments." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015); *W.R. Huff Asset Mgmt. Co. v. Kohlberg, Kravis, Roberts & Co., L.P.*, 566 F.3d 979, 985 (11th Cir. 2009) ("[T]he Supreme Court has strongly endorsed the following principle, enunciated in the Restatement (Second) of Judgments § 28[.]").

746 F.3d 184, 188 (5th Cir. 2014) ("If the procedural differences might be likely to cause a different result, then collateral estoppel is inappropriate.").[15]

Finally, even if HaloMD could establish all four elements, "[t]he actual decision [] to apply collateral estoppel undoubtedly involves equitable considerations[.]" *In re McWhorter*, 887 F.2d 1564, 1566 (11th Cir. 1989) (citation omitted); *PenneCom B.V. v. Merrill Lynch & Co., Inc.*, 372 F.3d 488, 493 (2d Cir. 2004) ("[C]ollateral estoppel is an equitable doctrine—not a matter of absolute right. Its invocation is influenced by considerations of fairness in the individual case."). Where, as here, a party alleges that the outcome of a prior proceeding resulted from a "fraudulent scheme to dupe" the finders of fact, any determination to apply collateral estoppel should not be made without the benefit of discovery. *See PenneCom*, 372 F.3d at 493.

III. BCBSGA States Claims for Violations of RICO (Counts I & II).

As meticulously laid out in the AC, Defendants and their "Sound Physicians Enterprise" have engaged in extensive RICO violations, employing interstate wires to submit thousands of fraudulent IDR submissions to

---

[15] *Helfrich v. Lehigh Valley Hosp.*, 03-cv-05793, 2005 WL 1715689, at *19 (E.D. Pa. July 21, 2005) ("[P]rocedural and economic disparities between unemployment compensation proceedings and later civil proceedings negate the preclusive effect of a Referee's factual findings."); *Cold Springs Farm Dev., Inc. v. Ball*, 661 A.2d 89, 91–92 (Vt. 1995) (informality of small claims court procedures render estoppel inapplicable); *Clusiau v. Clusiau Enters., Inc.*, 236 P.3d 1194, 1198–99 (Az. Ct. App. 2010) (collecting cases).

BCBSGA, the Departments, and IDREs. AC ¶¶ 3, 56, 58, 76, 115-94. Defendants' motions simply ignore the AC's allegations and misconstrue applicable law. But as detailed below: (1) the litigation activities exemption does not apply, and (2) BCBSGA pleads (a) predicate acts of wire fraud (b) an enterprise, (c) a pattern of racketeering activity, and (d) conspiracy.

A. The "Litigation Activities" Exemption Does Not Apply.

In yet another attempt to immunize their misconduct, Defendants invoke the RICO "litigation activities" exemption, a judge-made doctrine under which Courts generally do not allow litigation filings to serve a basis for RICO predicate acts. *Kim v. Kimm*, 884 F.3d 98, 103-04 (2d Cir. 2018). The policy rationale for this doctrine is rooted in the fact that Courts have extensive procedures and mechanisms for policing fraudulent filings, including rules of procedure, rules of evidence, the right to cross-examination, and penalties for perjury. *See United States v. Pendergraft*, 297 F.3d 1198, 1206-07 (11th Cir. 2002). Where parties and their counsel submit fraudulent filings, they may be subject to sanctions, disbarment, or state law remedies like malicious prosecution. *See id.* As the Eleventh Circuit noted in adopting the doctrine, "[w]e trust the courts, and their time-tested procedures, to produce reliable results, separating validity from invalidity, honesty from dishonesty." *Id.*

The litigation activities exemption does not apply to Defendants' fraud in IDR proceedings for at least two reasons. **First**, no court has held that the

exemption applies to IDR, and the policy reasons behind the doctrine do not support it. **Second**, Defendants' "litigation activities" here are independently intended to deceive the Departments, such that the exemption cannot apply. *See United States v. Lee,* 427 F.3d 881, 890 (11th Cir. 2005).

1. RICO Does Not Exempt Fraud in IDR Proceedings.

As part of the NSA Scheme, Defendants used false representations and attestations of eligibility to initiate thousands of ineligible IDR proceedings against BCBSGA. AC ¶¶ 72-78. No court has exempted IDR from RICO liability, and this Court should decline Defendants' invitation to do so.

Unlike court litigation, IDR proceedings do not utilize "time-tested procedures[ ] to produce reliable results, separating validity from invalidity, honesty from dishonesty." *Pendergraft*, 297 F.3d at 1206. For example:

- Rather than being filed by attorneys who are bound by ethical obligations, IDR is initiated anonymously, often using AI. AC ¶¶ 6, 75.
- IDR does not provide any opportunity for discovery or cross examination. *Compare supra* at 7; 41 *with Pendergraft*, 297 F.3d at 1206.
- IDREs are not neutral parties when evaluating eligibility; they have a *direct financial incentive* to find that disputes are eligible, or else they receive no compensation. AC ¶¶ 70, 100; *see Harper*, 976 F.3d at 1241.
- IDREs have no ability to issue sanctions. *Pendergraft*, 297 F.3d at 1206.
- IDR cannot serve as the basis for a malicious prosecution claim.[16] *Compare with Pendergraft*, 297 F.3d at 1207 (civil litigants may police

[16] *See, e.g.*, *Brennan v. Tremco Inc.*, 25 Cal. 4th 310, 317 (2001) ("[T]ermination by contractual arbitration is simply not the sort of favorable termination

false filings in the form of malicious prosecution claims, and there is no reason to "transform[ ] a state common-law action into a federal crime.").

- Principles like res judicata and collateral estoppel do not apply. *Compare supra* at 36-39 *with Kim*, 884 F.3d at 104 (RICO claims based on litigation activities "erode the principles . . . of res judicata and collateral estoppel" by challenging "the validity of documents presented in the underlying litigation" and "the judicial decisions that relied on them").

- Private IDR proceedings are not open to the public, and a disproportionately small number of providers initiate the overwhelming majority of IDR proceedings. AC ¶ 94 (ten companies initiated 71 percent of all disputes). Permitting wire fraud claims has no potential to chill "open access to the courts" or "inundate the federal courts with procedurally complex RICO pleadings." *See Kim*, 884 F.3d at 104.

See also supra at 6-9 (explaining other procedural shortcomings with IDR).

As recently as June 2025, the Departments urged IDREs to "reduce errors" and institute "robust quality assurance (QA) programs to verify dispute eligibility and review payment determinations" *Federal IDR Technical Assistance for Certified IDR Entities and Disputing Parties* (June 2025), available at https://bit.ly/4owqN5H. Those overseeing the IDR process do not believe IDREs "produce reliable results, separating validity from invalidity, honesty from dishonesty." *See Pendergraft*, 297 F.3d at 1206.

---

needed to support a malicious prosecution action."); *Whitney v. J.M. Scott Assocs., Inc.*, 09-cv-5007099S 2012 WL 4747476, at *9 (Conn. Super. Ct. Sept. 7, 2012) (same); *Diamond, Resorts Int'l, Inc. v. Aaronson*, No. 2018 WL 735627, at *10 (M.D. Fla. Jan. 26, 2018) (predicting "Florida Supreme Court" would reject malicious prosecution claim premised on the outcome of an arbitration).

That two other district courts have applied the "litigation activities" exemption "to arbitration proceedings" (HaloMD Br. 29), is inconsequential. Arbitration is not IDR. With arbitration, parties **agree** to resolve disputes through specific rules and procedures. *See Med-Trans Corp.*, 700 F. Supp. 3d at 1083. "The NSA's IDR, on the other hand, is statutorily compelled." *Id*; AC ¶ 224. And IDR proceedings bear little resemblance to arbitration, with none of the usual procedural safeguards. *See supra* at 6-9.

Moreover, neither of Defendants' cited authorities considered whether the rule *should* apply to arbitration (much less IDR). *Republic of Kazakhstan v. Stati* dismissed a wire fraud claim premised on public litigation to enforce an arbitral award, 380 F. Supp. 3d 55, 61 (D.D.C. 2019), and, on appeal, the D.C. Circuit affirmed on alternate grounds, 801 F. App'x 780 (D.C. Cir. 2020).

In *Diamond Resorts Int'l, Inc. v. Aaronson*, the court simply assumed without analysis that the rule applied to an arbitration demand. 2018 WL 735627, at *5-6 (M.D. Fla. Jan. 26, 2018). The issue was also immaterial; the court independently dismissed a wire fraud claim because the plaintiff did not allege an arbitration demand (1) contained false statements or (2) resulted in them being "deprived [] of something of value." *Id.* at *5-6, n.5.

And even if the exemption could apply to IDR, courts have limited its application to cases in which a plaintiff alleges wire fraud based on materials from "a *single* frivolous, fraudulent, or baseless lawsuit." *Kim*, 884 F.3d at 105

(emphasis added). The decision in *Kim* is one of the leading authorities on this doctrine. And "Kim leaves open the door for RICO claims premised on abusive litigation activities involving conduct beyond a single lawsuit." *Carroll v. U.S. Equities Corp.*, 18-cv-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020) (allowing RICO based on false filings in thousands of cases). [17]

2. The Exemption Does Not Apply Because Defendants Intentionally Deceive HHS.

Even if the litigation activities exemption could apply to IDR, it would not apply here because Defendants intended to deceive someone other than the finder of fact (*i.e.*, the IDREs). *Lee,* 427 F.3d at 890. Before an IDRE is selected, Defendants must first unlock the IDR process by deceiving HHS with false attestations of eligibility. 45 C.F.R. § 149.510(b)(2)(iii)(C) (the initiating party will "furnish the notice of IDR initiation to the Secretary [of HHS] by submitting the notice through the Federal IDR portal"), (c) (the parties or HHS select an IDRE **after** initiation); *see also* AC ¶¶ 3-4, 8, 43, 56, 64, 76, 79, 86.

[17] The Eleventh Circuit's unpublished decision *Town of Gulf Stream v. O'Boyle* held that "regardless of the scope and scale of the litigation, the courts are amply equipped to deal with frivolous litigation" as a basis for dismissing *extortion* claims. The emphasis on courts being "amply equipped" strongly supports the notion that the exemption for litigation materials has no application in IDR proceedings. In any event, the court notably declined to apply the litigation materials exemptions to the plaintiffs' mail and wire fraud claims, which it dismissed on alternate grounds. 654 F. App'x at 444–45 (plaintiffs' "failure to allege a duty to disclose is fatal to [their] RICO").

As the Eleventh Circuit held in *Lee*, the fact that a document is prepared for or used in litigation is not, by itself, sufficient to invoke the litigation activities exemption. 427 F.3d at 890. In *Lee*, the defendants were convicted on multiple counts of mail fraud, one of which stemmed from serving a "motion to dismiss" containing false affidavits on opposing counsel in a foreclosure action. The defendants appealed from their conviction on this count, invoking the exemption for litigation materials and citing *Pendergraft,* 297 F.3d 1198.

In affirming the conviction, the Eleventh Circuit clarified that *Pendergraft* did not bar all wire fraud claims based on litigation activities but simply turned on the fact that the relevant scheme was not intended to deceive anyone other than the court.[18] *Lee*, 427 F.3d at 890. In contrast, the defendants in Lee committed wire fraud because they used litigation documents to mislead "the lender and its counsel," rather than simply "influencing the court" (*id.*):

> Even if we read *Pendergraft* as appellants would like, we do not believe the mailings in this case implicate those policy concerns for the reasons already discussed. While we must be mindful of the concerns for placing obstacles in the path of full access to our courts, we cannot countenance mailing false claims clothed in

[18] Contrary to Defendants' claims, the unpublished decision in *Nero v. Mayan Mainstreet Inv 1, LLC* does not categorically bar wire fraud from being premised on litigation activities. In *Nero,* the trial court dismissed a *pro se* wire fraud claim based on court filings because "there is no indication that any of the filings… [were] transmitted across state lines." No. 6:14-cv-1363, 2014 WL 12610668, at *17 (M.D. Fla. Nov. 13, 2014). Without any elaboration, the Eleventh Circuit noted in dicta that the "federal fraud charges cannot be based on the filing of court documents." 645 F. App'x 864, 868 (11th Cir. 2016).

> legalese to lenders, with the intent of perpetrating or perpetuating a fraud, even where litigation is ongoing.

Id. at 891. In sum, *Lee* stands for the proposition that litigation materials may be the basis for wire fraud where, as here, the defendant intends for those documents to deceive someone other than the court itself. None of Defendants' cited authorities are to the contrary.[19]

Courts, of course, routinely impose wire fraud liability on defendants who falsely certify eligibility to access a statutory program, as Defendants did here. *See, e.g.*, *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 643 (2008) (wire fraud premised on defendants providing a "sworn affidavit affirming that it complies with the Single, Simultaneous Bidder Rule"); *United States v. Aldissi*, 758 F. App'x 694, 701 (11th Cir. 2018) (wire fraud conviction for, *inter alia*, falsely certifying eligibility for "Small Business Innovation Research" grants); *United States v. Maxwell*, 579 F.3d 1282, 1300 (11th Cir. 2009) (wire fraud conviction for falsely certifying eligibility for Disadvantaged Business

---

[19] *Kim*, 884 F.3d at 103 (declarations made "fraudulent representations intended to persuade the district court"); *Thomas v. Bartholomew*, No. 23-13683, 2025 WL 1179583, at *10 (11th Cir. Apr. 23, 2025) (plaintiff failed to plead fraud with particularity because he did not identify "what the defendants gained through the false representation about the timing of their discovery responses"); *Thakkar v. Good*, 6:20-cv-2005, 2021 WL 1830410, at *3 (M.D. Fla. Feb. 5, 2021) (wire fraud claim premised on unspecified "mis-statements, assertions and outright lies" to numerous courts); *Club Exploria, LLC v. Aaronson, Austin, P.A.*, 6:18-cv-576, 2019 WL 1297964, at *4 (M.D. Fla. Mar. 21, 2019) (claim premised on pre-litigation letters asserting frivolous claims).

Enterprises program); *United States v. Baker*, 648 F. App'x 830, 831 (11th Cir. 2016) (wire fraud conviction for "falsely representing Coastal's eligibility to participate in the FDIC's Temporary Liquidity Guarantee Program").

Finally, Provider Defendants remarkably compare (1) their systematic submission of thousands of intentionally false eligibility attestations and (2) BCBSGA making three minor, *inadvertent* factual mistakes in its original complaint that did not impact the viability of its claims and were subsequently *corrected* in the AC.[20] Provider Br. 40-42. This false equivalence demonstrates that difference between court proceedings—in which counsel function as officers of the court and correct even minor factual errors—with IDR proceedings, in which Defendants systematically make misrepresentations to initiate the IDR process for ineligible disputes.

Moreover, BCBSGA does not contend that any "false statements of fact" in any proceeding "amount to wire fraud." Provider Br. 40. Rather, it contends that in this case, Defendants made thousands of false attestations of eligibility to HHS "with the intent of perpetrating or perpetuating a fraud." *See Lee*, 427 F.3d at 891. And because Defendants intended to deceive HHS, their conduct

---

[20] Two of the dispute examples that BCBSGA corrected are patently ineligible for the IDR process because they involve Medicaid or Medicare claims, and they remain in the AC as examples of Defendants' fraud. The third had a typo in the dispute number, which BCBSGA corrected in the AC.

falls squarely within the scope of wire fraud liability and the litigation activities exemption does not apply.

B. BCBSGA Pleads Predicate Acts of Wire Fraud.

BCBSGA has supported its wire fraud claim by identifying the precise misrepresentations that Defendants must make—and did make—to initiate an ineligible dispute on the IDR Portal, AC ¶¶ 44-58, and by setting forth the specific time, date, source, and content of demonstrative misrepresentations constituting wire fraud. *See, e.g.*, AC ¶¶ 138, 142, 145. BCBSGA has also set forth clear allegations tying Defendants' conduct to its injuries, including millions of dollars in IDR fees and awards and operational expenses to combat Defendants' fraud. Defendants cannot and do not meaningfully dispute that the AC pleads the elements of wire fraud, including causation.[21]

1. The Wire Fraud Allegations Satisfy Rule 9(b).

Provider Defendants' 9(b) argument is foreclosed under controlling law. They argue that BCBSGA's wire fraud claims do not comply with Rule 9(b) because the AC alleges *thousands* of misrepresentations but does not "identify actors, dates, or actions" for each misrepresentation. Provider Br. 45–46. But

[21] BCBSGA does not assert that the number of Defendants' IDR disputes, their inflated demands for payment, or their overall bad faith are additional "theories of wire fraud." Provider Br. 42. Rather, these are attributes of the NSA Scheme that increases its effectiveness and profitability.

as the Eleventh Circuit has *repeatedly* held, in the case of "prolonged multi-act schemes," the particularity requirement is "relaxed," and the plaintiff need only allege "some examples of actual false claims to lay a complete foundation for the rest of his allegations." *U.S. ex rel. Clausen v. Lab. Corp. of Am., Inc.*, 290 F.3d 1301, 1314 n.25 (11th Cir. 2002); *Otto Candies, LLC v. Citigroup Inc.*, 137 F.4th 1158, 1187 (11th Cir. 2025) (same); *Burgess v. Religious Tech. Ctr., Inc.*, 600 F. App'x 657, 662–63 (11th Cir. 2015) (same).

Here, BCBSGA pleads the precise set of representations that Defendants must make to initiate each dispute on the IDR Portal. *See* AC ¶¶ 44-58. BCBSGA has also provided examples setting forth the specific time, date, source, and content of misrepresentations constituting wire fraud. *See, e.g.*, AC ¶ 138 (on May 9, 2024, HaloMD "falsely attested that the services SPEMG rendered to a BCBSGA Medicaid member were qualified for IDR"); *id.* ¶ 142 ("HaloMD . . . initiated IDR on September 3, 2024, with a false attestation that the emergency service was a qualified IDR item or service."); *id.* ¶ 145 ("HaloMD . . . initiated IDR on May 9, 2024, with a false attestation that the emergency service was a qualified IDR item or service."). Rule 9(b) requires nothing more. *See Aquino v. Mobis Ala., LLC*, 739 F. Supp. 3d 1152, 1180 (N.D.

Ga. 2024) ("Plaintiffs provided seven detailed examples . . . and explained each Defendant's role in furthering the fraud. This is more than sufficient.").[22]

Defendants' misrepresentations to IDREs are also not "questions of law" (HaloMD Br. 34), incapable of supporting a fraud claim. Defendants make *purely* factual misrepresentations "such as the type of health plan at issue, negotiation dates, and supporting documentation." AC ¶¶ 4, 44-57. Defendants *also* make attestations that certain services are "qualified" and "within the scope of the Federal IDR process." *Id.* ¶¶ 45-55. Courts routinely recognize wire fraud liability for precisely these types of attestations. *See, e.g. See*, *e.g.*, *Aldissi*, 758 F. App'x at 701 (falsely certifying eligibility for "Small Business Innovation Research" grants); *Maxwell*, 579 F.3d at 1300 (falsely certifying eligibility for Disadvantaged Business Enterprises program); *Baker*, 648 F. App'x at 831 ("falsely representing [] eligibility to participate in the FDIC's Temporary Liquidity Guarantee Program").

2. BCBSGA Pleads Causation.

BCBSGA has pleaded RICO causation by alleging that HHS and IDREs relied on Defendants' misrepresentations, directly causing BCBSGA to incur

---

[22] Defendants' cases are inapposite. *See Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1291 (11th Cir. 2010) (fraud plaintiff did "not point to a single specific misrepresentation"); *Henley v. Turner Broad. Sys., Inc.*, 267 F. Supp. 3d 1341, 1359 (N.D. Ga. 2017) (racial discrimination complaint failed to provide concrete examples of discrimination).

millions of dollars in IDR fees and awards. HaloMD disputes that this is sufficient for wire fraud, claiming only the third parties (and not BCBSGA) were deceived. HaloMD Br. 34. As detailed in Section V.B below, a plaintiff can establish fraud where, as here, the defendant intentionally induces reliance by an intermediary who has the legal authority to compel the plaintiff's financial loss. *See Fla. Rock & Tank Lines, Inc. v. Moore*, 258 Ga. 106, 106 (1988). And in the specific context of wire fraud, the Supreme Court categorically rejected Defendants' argument in *Bridge v. Phoenix Bond Indem. Co*.

In *Bridge*, the defendants signed false certifications of compliance with auction rules intended to equalize participants' chances of prevailing in an Ohio county tax lien auction process. Plaintiffs (defendants' competitors) brought a RICO claim asserting the defendants had violated the rules to obtain a disproportionate share of tax liens. Like HaloMD, the defendants in *Bridge* claimed the plaintiffs could not recover for wire fraud because the defendants "attestations of compliance . . . were made to the county," not plaintiffs, and thus it was only the county that "relied on [those] misrepresentations when it permitted [Defendant] to participate in the auction." 553 U.S. at 648.

The Supreme Court disagreed, explaining that "a plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations." *Id.* at 661. Rather, it was

sufficient to show that "someone relied on the defendant's misrepresentations," and, as a result, the plaintiffs were harmed.[23] *Id.* at 658; *see also Otto Candies,* 137 F.4th at 1197 n.21 (same); *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1350 (11th Cir. 2016) ("To be sure, RICO does not contain a requirement that the plaintiff personally relied on the defendant's fraudulent misrepresentation.").

C. BCBSGA Pleads a RICO Enterprise.

The AC pleads the three components of a RICO enterprise: "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v. United States*, 556 U.S. 938, 946 (2009). Defendants have challenged only the "purpose" element (*see* HaloMD Br. 31 & Provider Br. 47).[24] The AC satisfies this element by alleging facts to "plausibly support the inference that the defendants were collectively trying to make money . . . *by fraud*." *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1212 (11th Cir. 2020) (emphasis in original).

Defendants' arguments to the contrary are unavailing. First, Provider Defendants argue that BCBSGA "has not alleged sufficient facts" to rule out

---

[23] HaloMD also disputes proximate cause "because the IDREs—not HaloMD—made the final eligibility and payment determinations in each IDR." Halo Br. 34. But that was the case in *Bridge*, where the county, not the defendants, was responsible for awarding tax liens in the auction.

[24] Defendants have thus waived challenges to any other element. *In re Egidi*, 571 F.3d 1156, 1163 (11th Cir. 2009) (arguments not "presented in a[n] [] initial brief or raised for the first time in the reply brief are deemed waived").

"the obvious alternative explanation that the defendants simply interpret IDR eligibility differently." Provider Br. 48. This ignores that BCBSGA has specifically alleged that "Defendants falsify key elements as part of the initiation process, such as the type of health plan at issue, negotiation dates, and supporting documentation." AC ¶¶ 4, 44-57. These are factual allegations not subject to competing interpretation. No reasonable person could conclude, for example, that it was proper for Defendants to misrepresent Medicare or Medicaid claims as eligible to dispute in the IDR portal. *See id.* ¶¶ 3, 50, 135-40, 147-56. Nor could they believe that the NSA applies to disputes subject to a specified state law. *See id.* ¶¶ 37-43, 47-48, 141-46, 157-60.[25]

More importantly, Provider Defendants misapply the "alternative explanation" language from its cited case law. In each of those authorities, the plaintiff sought to establish an agreement between otherwise independent commercial actors based solely on parallel conduct. Courts thus required the

---

[25] Defendants suggest they are unable to determine eligibility in some instances because details of a patient's coverage may be "known only to the insurer." HaloMD Br. 7. But after it receives each of their bills, BCBSGA provides Defendants an "explanation of payment ('EOP'), which includes information about the member's coverage" (AC ¶25) along with "a phone number and email address for providers to seek further information or initiate open negotiations." *Id.* ¶33. These highly sophisticated Defendants have access to all necessary information, and they have a duty to investigate before initiating IDR and affirmatively attesting to eligibility.

plaintiffs to assert facts ruling out alternative explanations for parallel conduct.[26] Here, there is no dispute that Defendants have a close contractual relationship and shared financial interest, in which HaloMD is responsible for submitting the relevant disputes on Provider Defendants' behalf and is paid on commission for any recovery. AC ¶ 125. BCBSGA does not rely on parallel conduct to prove an agreement, and no "alternative explanation" is required.

Next, HaloMD argues that the AC fails to allege sufficient facts to plausibly plead an agreement to engage in fraud. HaloMD Br. 32. But as reflected in HaloMD's own cited cases, this is not a difficult bar to clear. BCBSGA need only allege facts sufficient to show that Defendants all had reason to know of the illegal conduct. *C.f. Aquino*, 739 F. Supp. 3d at 1189.

In *Aquino*, plaintiffs asserted RICO claims against manufacturers and staffing companies, accusing them of luring foreign workers to perform unskilled labor inconsistent with their visa requirements. *Id.* at 1175-76. Plaintiffs asserted two enterprises between the manufacturers and two sets of staffing companies involving two separate sets of workers. *Id.* at 1173. As to

---

[26] *See Twombly*, 550 U.S. at 567 (one cannot plead "an antitrust conspiracy through allegations of parallel conduct" alone); *Lechter v. Aprio, LLP*, 565 F. Supp. 3d 1279, 1315 (N.D. Ga. 2021) (plaintiffs relied on "parallel conduct" alone to plead an agreement between "a diverse collection of accountants, lawyers, LLC managers, appraisers, and conservation organizations in multiple states"); *Am. Dental Ass'n*, 605 F.3d at 1295 (rejecting RICO enterprise premised on "parallel conduct").

the first enterprise the court found plaintiffs plausibly alleged that the manufacturers agreed to the scheme because: (1) they directly supervised the relevant group of workers; (2) these workers wore "identification badges" indicating they were foreign workers; and thus (iii) "it can readily be inferred that [the manufacturers] knew that [these workers] were not performing the skilled work they were required to perform." 739 F. Supp. 3d at 1176. In contrast, the court found that plaintiffs failed to plead the second enterprise because: (1) the relevant group of workers did not wear "identification badges"; and thus, (2) there was no basis to "infer that [the manufacturers] agreed to (or even knew of) the purported scheme." *Id.* at 1189.

Here, BCBSGA easily satisfies its burden to allege facts from which it can be inferred that all Defendants knew of the fraudulent submissions. The AC alleges that that Provider Defendants and HaloMD each made materially identical false representations to the Departments, IDREs, and BCBSGA. *Id.* ¶ 131. It alleges that that Provider Defendants are "fully aware of the false attestations that HaloMD submits in their names and actively participate[s] in the scheme by authorizing, directing, or ratifying the submissions." *Id.* ¶ 89. And it provides concrete examples of these submissions, replete with direct

coordination between the Defendants. *Id.* ¶¶ 135-160.[27] It is thus more than "plausible that there was a meeting of the minds" to engage in this illegal conduct. *See Aquino*, 739 F. Supp. 3d at 1189.

D. BCBSGA Pleads a Pattern of Racketeering Activity.

To adequately allege a pattern of racketeering activity, a plaintiff need only allege that defendants "engaged in at least two predicate acts of racketeering activities occurring within a ten-year time period." *Aquino,* 739 F. Supp. 3d at 1215 (quotations omitted). HaloMD argues that BCBSGA fails to allege a pattern of racketeering activity because "litigation activities . . . do not . . . constitute wire fraud." HaloMD Br. 32. This argument fails for the reasons detailed in Section III.A. And while HaloMD argues that racketeering under 18 U.S.C.A. § 1952 must be "the kind of activity one would expect to see in gang cases," (HaloMD Br. 32), that is irrelevant because BCBSGA alleges wire fraud, which is among the enumerated offenses under the definition of racketeering activity in 18 U.S.C.A. § 1961.

---

[27] HaloMD's remaining citations lead to the same conclusion. In *Ray*, the court found (in stark contrast to this case) that plaintiffs failed to allege purpose because there were no factual allegations from which it could infer that the defendant "knew that Spirit was engaging in misleading behavior" or "directly profited from the misrepresentation." 836 F.3d at 1353. And in *Am. Dental Ass'n*, the court found plaintiffs failed to allege any agreement at all, because they alleged only "parallel conduct" and membership in the same trade associations. 605 F.3d at 1295.

E. BCBSGA Pleads a Conspiracy to Commit Wire Fraud.

BCBSGA has pleaded a RICO conspiracy under 18 U.S.C. § 1962(c). Provider Defendants' arguments to the contrary fail for two reasons. Provider Br. 49. **First**, as discussed in Sections III.A-D, BCBSGA adequately pleads a claim under 18 U.S.C. § 1962(c). And **second**, "even if [BCBSGA] ha[s] not pleaded a viable substantive RICO claim, their conspiracy allegations [can] independently survive." *Otto Candies*, 137 F.4th at 1203. "[F]ederal courts have recognized that the nature of conspiracies often makes it impossible for the plaintiff to provide details at the pleading stage," and thus plaintiffs "should be allowed to resort to the discovery process and not be subjected to a dismissal of his complaint.'" *Id.* at 1201 (internal citation omitted). For this reason, "the general plausibility standards of Rule 8(a) control the agreement element of the[] RICO conspiracy claim," and a "conspiracy may be inferred from the conduct of the participants." *Id.*

The decision in *Otto Candies* is instructive. There, the court reinstated a conspiracy claim, finding that plaintiffs had plausibly alleged that the defendants (1) had a contractual "business relationship," (2) had a "direct financial incentive to participate in the conspiracy," and (3) made "joint fraudulent misrepresentations" including because one defendant "approv[ed] false documentation[]" submitted by its co-conspirator. *Id.* at 1202-03.

Here, BCBGS has likewise alleged that: Defendants (1) have a close contractual relationship (AC ¶ 125); (2) have each made materially identical false representations (*id.* ¶ 131); and (3) Provider Defendants are "fully aware of the false attestations that HaloMD submits in their names and actively participate[s] in the scheme by authorizing, directing, or ratifying the submissions" (*id.* ¶ 89). BCBSGA alleges facts which allow the Court "to infer an agreement to engage in the scheme." *See Otto Candies*, 137 F.4th at 1203.

IV. BCBSGA States a Claim under ERISA (Count XI).

Contrary to Defendants' arguments, BCBSGA has adequately alleged it is a fiduciary for purposes of ERISA, 29 U.S.C. § 1132(a)(3), to pursue Count XI. ERISA defines "fiduciary" as follows:

> Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets . . . or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan . . . .

29 U.S.C. § 1002(21)(A).

Here, BCBSGA alleges that the employer sponsors of certain ERISA-governed health plans: (1) "delegate to BCBSGA discretionary authority to recover overpayments, including those resulting from fraud, waste, or abuse," (AC ¶ 256); and (2) "delegate authority to BCBSGA to administer the IDR process on behalf of the plans" (*id.* ¶ 22). Exercising this discretionary

authority, BCBSGA now seeks to enjoin and obtain equitable relief from Defendants' fraudulent practices. *See id.* at ¶¶ 257, 262; *see also* 29 U.S.C. § 1132(a)(3) (fiduciaries may bring actions to "enjoin any act or practice which violates any provision of this subchapter or the terms of the plan").

None of Defendants' cited authorities warrants dismissal.[28] Rather, controlling authority confirms that a party is acting as a fiduciary where, as here, it is vested by the plan with the authority to protect and recover plan assets. *See Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347, 1352 n.4 (11th Cir. 1998) (finding plaintiff "amply satisfied its burden of demonstrating that it is plausibly a fiduciary" where plan authorized it to recover plan assets through subrogation). Accordingly, BCBSGA has met the minimal pleading requirements regarding its standing as a fiduciary. *E.g.*, *Woods v. S. Co.*, 396 F. Supp. 2d 1351, 1369-70 (N.D. Ga. 2005) (discussing "minimal allegations" needed to survive a motion to dismiss); *Fadely v. Blue Cross & Blue Shield of Ga., Inc.*, No. 1:11-cv-1409-TWT, 2011 WL 4974857, at

---

[28] *See Baker v. Big Star Div. of Grand Union Co.*, 893 F.2d 288, 290 (11th Cir. 1989) (no standing where a plaintiff "did no more than 'rent' the processing department of" the claims administrator); *Oliver v. Coca Cola Co.*, 497 F.3d 1181, 1195 (11th Cir. 2007) (employer was the plan administrator because it made final decisions on claims); *Sanctuary Surgical Ctr., Inc. v. Aetna Inc.*, 546 F. App'x 846, 851-52 (11th Cir. 2013) (addressing provider's ability to bring a breach of fiduciary duty claim under an assignment of benefits from a patient).

*6 (N.D. Ga. Oct. 18, 2011) (Thrash, J.) ("Whether the facts of the case support such a claim may be revisited at summary judgment.").[29]

Finally, BCBSGA has also pleaded violation of ERISA. Under 29 U.S.C. § 1185e(c)(1)(B) and (2)(A), negotiations are mandatory precursor to IDR. *See also* 29 C.F.R. § 2590.716-8(b)(2)(i). By pleading that Defendants have "fail[ed] to properly initiate or engage in open negotiations prior to initiating the IDR process" (AC ¶ 260), BCBSGA has pleaded a statutory violation. In addition, 29 U.S.C. § 1185e(c)(1)(B) requires that an initiating party submit "to the other party and to the [DOL] Secretary a notification (containing such information as specified by the Secretary)," which includes the commencement date of open negotiations, an attestation that the items or services are qualified for IDR resolution, the QPA, and information about the QPA. 29 C.F.R. § 2590.716-8(b)(2)(iii)(A)(1)–(9). By pleading that Defendants submit false attestations or misrepresent and falsify this required information, BCBSGA has pleaded violations of 29 U.S.C. § 1185e(c)(1)(B) and 29 C.F.R § 2590.716-8(b)(2)(iii)(A).

---

[29] Provider Defendants cite out-of-circuit authorities for the proposition "Blue Cross and its affiliates routinely" argue "that they are not an ERISA fiduciary." Provider Br. 50. These cases do not involve "affiliates" of BCBSGA. More importantly, a party may be a fiduciary for certain purposes but not for others; it is necessarily a fact-specific question. *See Pledger v. Reliance Tr. Co.,* 240 F. Supp. 3d 1314, 1322 (N.D. Ga. 2017).

V. BCBSGA States Claims Under Georgia Law.

A. BCBSGA Pleads Georgia RICO Violations (Count III).

In challenging BCBSGA's Georgia RICO claim, Defendants incorporate their arguments for dismissal of the federal RICO claim. *See* Provider Br. 51-52; HaloMD Br. 34-35. For the reasons stated in Sections III.A-C, these arguments fail. In addition, beyond mail fraud, a violation of the Georgia RICO statute may be premised on predicate acts including theft by deception and fraud. *See, e.g.*, *Ameris Bank v. Spa 4 Less, LLC*, No. 1:23-cv-04059, 2025 WL 1232926, at *5 (N.D. Ga. Feb. 13, 2025) (theft by deception); *Henley v. Nationstar Mortg., LLC*, No. 14-cv-2700, 2016 WL 11745550, at *11 (N.D. Ga. Nov. 23, 2016) (fraud). Thus, in addition to mail fraud, BCBSGA has established a pattern of racketeering activity based on these claims.

B. BCBSGA Pleads Common Law Fraud (Count IV).

BCBSGA pleads all elements of common law fraud. As detailed in the AC, Defendants deliberately submitted thousands of false statements to the IDR Portal. In addition to deceiving BCBSGA, Defendants intended to deceive HHS and the IDREs, who could directly compel BCBSGA to pay fees and awards. As intended, (1) HHS relied on the false statements by opening IDR proceedings and charging BCBSGA administrative fees, and (2) IDREs relied on the statements by issuing eligibility decisions and awards against BCBSGA.

Defendants argue that BCBSGA has failed to adequately plead reliance because BCBSGA itself "was not misled, and did not rely on any alleged misrepresentations." *See* Provider Br. 53; HaloMD Br. 35. But under Georgia law, this element is satisfied where, as here, a defendant intentionally induces reliance by an intermediary who has the legal authority to compel the plaintiff's financial loss. *Fla. Rock,* 258 Ga. at 106.

The Georgia Supreme Court's decision in *Florida Rock* is controlling. In that case, a gas station owner had a cash-on-delivery arrangement with a truck driver for delivery of Exxon fuel. 183 Ga. App. 520, 521 (Ga. Ct. App. 1987). When the driver arrived with the gas, the owner asked to pay at later date, and the driver refused. *Id.* at 521. The owner then called Exxon and made false statements to induce it to direct the driver to complete delivery. *Id.* The owner later failed to pay, and the driver had to cover the cost of the gas. *Id.* The driver then sued the gas station owner for fraud and won at trial. *Id.* at 520.

The Georgia Court of Appeals reversed and held fraud requires "a misrepresentation [be] made *to* the defrauded party, and relied upon *by* the defrauded party." 258 Ga. 106, 106 (Ga. 1988) (emphasis in original). In a further appeal, the Georgia Supreme Court reinstated the fraud verdict. *Id.* at 107. The court explained that the owner's "designs and deeds were fraudulent" and that his "scheme succeeded in inducing *Exxon* to authorize the delivery of the gasoline without payment, and it was obviously on *this* authorization that

[the driver] relied."[30] *Id.* (emphasis in original). As a matter of Georgia law, these facts were sufficient to establish reliance for the purposes of fraud:

> [T]his is not a case of a person being held accountable for an act he never intended to commit, or becoming liable to another whom he never intended to defraud. On the contrary, [the gas station owner] was the efficient cause of the instruction given by Exxon to Florida Rock's driver, on which the driver relied, and through which Florida Rock was defrauded.

Id.; *see also In re Osborne*, 17-cv-51682, 2020 WL 6937703, at *9 (Bankr. M.D. Ga. Sept. 30, 2020) ("Under the *Florida Rock* doctrine . . . a fraudulent representation can be made to and relied upon by a party other than the plaintiff."); *DeThomas Invs., LLC v. LMRK PropCo, LLC*, 918 S.E.2d 601, 607 (Ga. Ct. App. 2025) (finding fraud claim viable where defendant misrepresented its property ownership to a zoning commission "which induced the commission to rezone the [] property, damaging [plaintiff's] easement").[31]

Florida Rock reflects the commonsense principle allowing for a fraud recovery where an intermediary relied on the Defendants' misrepresentation,

---

[30]For the avoidance of doubt, this was not a case in which a misrepresentation was simply repeated to a plaintiff, who then assumed its truth and acted in reliance. Rather, this was a case in which "only [] *Exxon* relied on [the defendant's] false representation and [] directed [the driver] to leave the gas at [the] station." *Id.*, 107 (Gregory, J., *dissenting*).

[31]This principle is often applied to permit plaintiffs to assert fraud where a defendant deceives a bank into paying under a letter of credit. *See*, *e.g.*, *ADA-ES, Inc. v. Big Rivers Elec. Corp.*, 465 F. Supp. 3d 703, 711 (W.D. Ky. 2020); *Holmberg v. Morrisette*, 800 F.2d 205, 211 (8th Cir. 1986).

but the plaintiff is the "real party in interest." *Sawyer v. Allison*, 151 Ga. App. 334, 335 (Ga. Ct. App. 1979) (sustaining fraud verdict in favor of plaintiff vehicle owner, where plaintiff's friend took vehicle for repairs and was defrauded by a mechanic); *Georgia-Carolina Brick & Tile Co. v. Brown*, 153 Ga. App. 747, 748 (1980) (although plaintiff was "not present when the misrepresentations were made," she is "a real party in interest, holds title to the property damaged, and is directly injured by the fraud").

Here, Defendants deliberately sought to induce reliance by HHS and the IDREs for the sole purpose of defrauding BCBSGA. BCBSGA was clearly the "real party in interest" and victim of these misrepresentations. "This is not a case of a person being held accountable for an act he never intended to commit, or becoming liable to another whom he never intended to defraud." *See Florida Rock*, 258 Ga. at 107. BCBSGA states a viable claim for common law fraud, and Defendants' arguments to the contrary fail under controlling law.

C. BCBSGA Pleads Negligent Misrepresentation (Count V).

In the alternative to its common law fraud claim, BCBSGA pleads that Defendants negligently submitted false information to HHS and the IDREs, causing BCBSGA to incur IDR fees and awards for ineligible disputes. Once again, Defendants contend that reliance is missing because it was HHS and the IDREs who relied on Defendants' misrepresentations. *See* HaloMD Br. 36; Provider Br. 52. Once again, Defendants are wrong about Georgia law.

Georgia permits recovery for negligent misrepresentation where the defendant induces reliance by an intermediary resulting in direct harm to the plaintiff. *See DeThomas,* 918 S.E.2d at 607 (finding negligent misrepresentation claim viable where defendant misrepresented its property ownership to a zoning commission causing harm to plaintiff). And while the Georgia Supreme Court previously adopted the Restatement (Second) of Torts § 552, the Eleventh Circuit has specifically held that Georgia's application of this rule permits recovery by plaintiffs who "indirectly rely on a negligent misrepresentation." *Squish La Fish, Inc. v. Thomco Specialty Prods., Inc.*, 149 F.3d 1288, 1291 (11th Cir. 1998).

HaloMD also claims its negligent misrepresentations are conditionally privileged under Georgia's anti-SLAPP law. *See* HaloMD Opp. at 26. But as reflected in HaloMD's cited cases, that law applies to claims sounding in defamation, not negligent misrepresentation.[32] *See Beckman v. Regina Caeli, Inc.*, 752 F. Supp. 3d 1346, 1369, 1371 (N.D. Ga. 2024) (finding plaintiff stated negligent misrepresentation based on defendant's issuance of "erroneous tax forms" to the IRS while noting, as to a defamation claim, that those same

[32] HaloMD inexplicably cites *Harris v. F.D.I.C.*, 885 F. Supp. 2d 1296, 1311 (N.D. Ga. 2012), which did not discuss the privilege. And *Smith v. Henry* applied the privilege to claims for libel, slander, invasion of privacy, and something referred to loosely as "negligence" that appears to be a claim for negligent infliction of emotional distress. 276 Ga. App. 831, 831 (2005).

"statements to the IRS might be conditionally privileged"). And even if conditional privilege could apply, it would be premature to dismiss BCBSGA's claim as "[t]he question of conditional privilege is typically for the jury." *See Beckman,* 752 F. Supp. at 1372.

D. BCBSGA Pleads Statutory Fraud (Count VI).

HaloMD's request for dismissal of BCBSGA's statutory fraud claim relies on the same faulty reasoning as its request to dismiss BCBSGA's common law fraud claim. HaloMD Br. 37 (arguing that the AC does not allege that that HaloMD made misrepresentations to induce BCBSGA's reliance, but "rather to induce the IDREs to act to BCBSGA's detriment"). But "OCGA § 51–6–1 [simply] codifies an action for common law fraud." *Simpson Consulting, Inc. v. Barclays Bank PLC*, 227 Ga. App. 648, 650 (1997). Thus, HaloMD's argument fails because, as detailed in Section V.B *supra*, Georgia recognizes a viable fraud claim under precisely these circumstances.

E. BCBSGA Pleads Theft by Deception (Count VII).

BCBSGA alleges that Defendants' fraudulent submissions to the IDR Portal also render them liable for theft by deception. Defendants make three unavailing arguments for dismissal. First, HaloMD argues that BCBSGA must identify specific payments made "by wire transfer" because a theft by deception claim requires "a specific, separate, identifiable fund[.]" *See* HaloMD Br. 38-

39.[33] But this requirement applies only to a claim for conversion, which is "much narrower than a claim for damages." *Zimmerman v. Roche*, 1:09-cv-0605, 2010 WL 11506545, at *6 (N.D. Ga. Sept. 20, 2010). The relevant statute defines "property" to include "anything of value"—even "intangible personal property." *Edible IP, LLC v. Google, LLC*, 869 S.E.2d 481, 485 (Ga. 2022). Here, Defendants "received millions of dollars in illicitly obtained reimbursements" from BCBSGA (AC ¶ 102), which is more than sufficient.

Second, Provider Defendants claim BCBSGA failed to plead their specific intent to deceive BCBSGA. But the AC is replete with allegations of such intent. *See*, *e.g.*, AC ¶ 115 (Provider Defendants "designed and coordinated the multifaceted NSA Scheme intended to defraud payors like BCBSGA").

Finally, Provider Defendants argue that BCBSGA itself was not misled during any IDR proceeding. Provider Br. 53. But O.C.G.A. § 16-8-3(b) prohibits actions to obtain property by "creating or confirming another's impression of an existing fact . . . which is false." Nothing in the statute requires that the individual who is deceived is the same individual whose property was taken.[34]

---

[33] HaloMD's sole cited authority, *Abdullah Bey v. Naidu*, was issued on default and misapplied *Taylor v. Powertel, Inc.*, 250 Ga. App. 356 (Ga. Ct. App. 2001)—a case considering only a conversion claim. *Abdullah Bey v. Naidu*, 21-cv-00832, 2022 WL 951333, at *1 (N.D. Ga. Mar. 30, 2022).

[34] In the sole case that cited by Provider Defendants, the court had no reason to assess whether deception of a third party would be sufficient because the

F. BCBSGA Pleads Civil Conspiracy (Count VIII).

BCBSGA has asserted a civil conspiracy claim based on the "orchestrated scheme between HaloMD and the Provider Defendants to submit material misrepresentations to the IDREs and BCBSGA regarding eligibility of the IDR disputes." AC ¶ 241. HaloMD challenges this count because "nothing HaloMD allegedly did was tortious." HaloMD Br. 39. For the reasons stated in Sections V.A-E, BCBSGA has alleged multiple viable tort claims, such that HaloMD's argument for dismissal of the Civil Conspiracy count fails.

G. BCBSGA Pleads a Violation of the Georgia Uniform Deceptive Trade Practices Act ("GUDTPA") (Count IX).

BCBSGA alleges that Defendants' fraudulent submissions to the IDR Portal, in which they knowingly mischaracterized the services rendered to BCBSGA subscribers, also render them liable for violating GUDTPA. Defendants' arguments for dismissal on the pleadings fail. First, Provider Defendants contend that the GUDTPA is inapplicable because the "statute restricts conduct in trade or commerce, but does not provide relief related to conduct during litigation or arbitration." Provider Br. 54–55 (citing Ga. Code § 10-1-372). But GUDPTA broadly "allows recovery whenever a person"—like Defendants—"performs a deceptive trade practice 'in the course of his

---

State only alleged that the victim himself was the one deceived. *See King v. State*, 447 S.E.2d 645, 648 (Ct. App. Ga 1994).

business, vocation, or occupation.'" *Sweeney v. Athens Reg'l Med. Ctr.*, 709 F. Supp. 1563, 1582 (M.D. Ga. 1989) (finding statements actionable where they were made "outside the context of consumer commerce"). Here, Defendants' deceptive trade practices were made in the course of their business as health care providers or organizations seeking payment for health care services.

Next Defendants contend that GUDTPA is inapplicable because BCBSGA has not alleged that it is a competitor or consumer of HaloMD's services. Halo Br. 40. But GUDTPA expressly states that a plaintiff "need not prove competition between the parties . . . ." Ga. Code § 10-1-372(b). And "nothing in the language of the statute requires the plaintiff to be a consumer . . . ." *Park 80 Hotels, LLC v. Holiday Hosp. Franchising, LLC*, 2023 WL 2445437, at *16 (N.D. Ga. Feb. 16, 2023) (alteration omitted) (GUDTPA's scope "is broad enough to reach transactions" between commercial parties").

VI. The Complaint is Not a Shotgun Pleading.

Defendants claim that the AC is an impermissible "shotgun pleading" because "each count is asserted against apparently all three Defendants without specifying which one is responsible and specifically for what conduct alleged." HaloMD Br. 45; Provider Br. 46. But the AC provides numerous and specific examples of Defendants' misrepresentations and identifies which Defendant made those misrepresentations. *See* Section III.B. This is in stark contrast to HaloMD's sole cited authority. *See Broussard v. Roblox Corp.*, 1:24-

cv-1697, 2025 WL 1084686, at *2 (N.D. Ga. Apr. 10, 2025) ("There is no indication what misrepresentations were allegedly made, which Defendant allegedly made them, and in which of those Defendant's products the representations are made.").[35]

And while the AC alleges the same claims against all three Defendants, the law is clear that "a plaintiff may plead claims against multiple defendants by referring to them collectively . . . as 'defendants.' These collective allegations are construed as applying to each defendant individually." *Parris v. 3M Co.*, 595 F. Supp. 3d 1288, 1311 (N.D. Ga. 2022); *Kyle K. v. Chapman*, 208 F. 3d 940, 944 (11th Cir. 2000) ("[T]hat defendants are accused collectively does not render the complaint deficient.").

VII. In the Alternative, BCBSGA Should be Permitted to Cure Any Deficiencies Through Amendment.

BCBSGA has stated a plausible claim for relief with respect to each count alleged in the AC. In the event, however, that the Court finds any claim inadequately pleaded, BCBSGA should be afforded leave to remedy any

---

[35] Provider Defendants' reliance on *Weiland v. Palm Beach Cnty. Sheriff's Office* is misplaced. In that case, the court found the complaint was not a shotgun pleading because, as is the case here, "the defendants did not move for a more definite statement under Federal Rule of Civil Procedure 12(e) or otherwise assert that they were having difficulty knowing what they were alleged to have done and why they were liable for doing it." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1324 (11th Cir. 2015).

deficiencies. "Generally, where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *Garcia v. Chiquita Brands Int'l, Inc.*, 48 F.4th 1202, 1220 (11th Cir. 2022) (citation and quotation omitted). BCBSGA's prior filing of amended complaint pursuant to Rule 15(a) with consent of the defendants does not amount to "at least one chance to amend[.]" *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001).

CONCLUSION

For the foregoing reasons, BCBSGA respectfully requests that the Court deny Defendants' Motions in their entirety.

Dated: October 24, 2025

Respectfully Submitted,

/s/ James L. Hollis

James L. Hollis
Georgia Bar No. 930998
Katherine K. Carey
Georgia Bar No. 475454
Balch & Bingham, LLP
30 Ivan Allen Jr. Blvd, N.W.
Suite 700
Atlanta, GA 30308
Tel: (404) 261-6020
Fax: (404) 261-3656
jhollis@balch.com
kcarey@balch.com

Martin J. Bishop (pro hac vice)
Illinois Bar No. 6269425
Alexandra M. Lucas (pro hac vice)
Illinois Bar No. 6313385

Jason T. Mayer (pro hac vice)
Illinois Bar No. 6309633
Crowell & Moring LLP
455 N. Cityfront Plaza Drive
Suite 3600
Chicago, IL 60611
Tel: (312) 321-4200
mbishop@crowell.com
alucas@crowell.com
jmayer@crowell.com

Jed Wulfekotte (pro hac vice forthcoming)
Zachary B. Kizitaff (pro hac vice)
Pennsylvania Bar No. 327568
Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
Tel: (202) 624-2500
zkizitaff@crowell.com

Attorneys for Plaintiff Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.

CERTIFICATE OF COMPLIANCE

I hereby certify that, on October 24, 2025, the foregoing has been prepared in Century Schoolbook, 13-point font, in conformance with LR 5.1(c), NDGa, and in conformance with LR 7.1, NDGa, as modified by the Court's Order of October 24, 2025, Dkt. Nos. 48-49, setting a limit of 75 pages exclusive of caption, tables, and signature blocks.

/s/ James L. Hollis
James L. Hollis
Georgia Bar No. 930998

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2025, I electronically filed the foregoing with the Court's E-Filing, which will send notification of such filing to all counsel of record.

/s/ James L. Hollis
James L. Hollis
Georgia Bar No. 930998