UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY d/b/a ANTHEM BLUE CROSS AND BLUE SHIELD,

Plaintiff,

v.

HALOMD, LLC, ALLA LAROQUE, SCOTT LAROQUE, MPOWERHEALTH PRACTICE MANAGEMENT, LLC, EVOKES, LLC, MIDWEST NEUROLOGY, LLC, ONE CARE MONITORING, LLC, and VALUE MONITORING LLC,

Defendants.

1:25-cv-00388-MWM

PLAINTIFF ANTHEM'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

SUMMARY OF ANTHEM'S PRINCIPAL ARGUMENTS AND PRIMARY AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

The Amended Complaint ("AC," at ECF No. 25) pleads detailed and extensive allegations describing Defendants[1] scheme to flood the No Surprises Act's ("NSA") independent dispute resolution ("IDR") process with thousands of knowingly ineligible disputes against Anthem[2] in violation of the Racketeering Influenced and Corruption Organizations ("RICO") Act, the Employee Retirement Income Security Act ("ERISA"), and various Ohio statutes and torts. The allegations far exceed what is necessary to state a claim pursuant to Fed. R. Civ. P. 8(a) or 9(b). For the following reasons, the Court should deny Defendants' Motions to Dismiss in their entirety.

First, Defendants' jurisdictional arguments fail. Anthem establishes Article III standing, alleging that (1) Defendants' "NSA Scheme" caused and will continue to cause millions of dollars of harm to Anthem, (2) that injury is traceable to Defendants' illegal actions, and (3) the injury would be redressed by the award of damages and an injunction against Defendants' further violations. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *infra* at Section I.A.. Anthem also alleges facts establishing this Court's personal jurisdiction over the non-resident Defendants based on ERISA's nationwide service of process provision, 29 U.S.C. § 1132(e)(2); RICO's venue and process provision, 18 U.S.C. § 1965(b); and Ohio's long-arm statute, Ohio Rev. Code § 2307.382. *See Med. Mut. of Ohio v. deSoto*, 245 F.3d 561, 567 (6th Cir. 2001) (ERISA); *Doe v. Varsity Brands, LLC*, 1:22-cv-02139, 2023 WL 4935933, at *14 (N.D. Ohio Aug. 2, 2023) (RICO); *Ky. Oaks Mall Co. v. Mitchell's Formal Wear, Inc.*, 559 N.E.2d 477, 480 (Ohio 1990); *infra* at Section I.B.

[1] "Defendants" include (1) Evokes, LLC ("Evokes"), Midwest Neurology, LLC ("Midwest Neurology"), One Care Monitoring, LLC ("OCM"), Value Monitoring, LLC ("Value Monitoring"), and MPOWERHealth Practice Management, LLC ("MPOWERHealth") (collectively, the "Provider Defendants"); (2) HaloMD, LLC ("HaloMD"); and (3) Alla and Scott LaRoque (the "LaRoques"). All Defendants are members of the "LaRoque Family Enterprise."

[2] "Anthem" is Plaintiff Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield.

Second, the NSA's "Judicial Review Provision," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II), does not apply to Anthem's claims for at least three independent reasons. First, the Judicial Review Provision solely applies a payment determination from a certified IDR entity ("IDRE"); it does not apply to limit judicial review of Defendants' NSA Scheme through which they submitted thousands of knowingly ineligible disputes. *See id.*; 45 C.F.R. § 149.510(c)(4)(vi); *infra* at Section II.A.1. Second, Anthem also meets the prerequisites for judicial review under the Judicial Review Provision, and the NSA does not incorporate the Federal Arbitration Act's ("FAA's") procedural provisions, let alone impose them as exclusive remedies. *See Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1082 (M.D. Fla. 2023); *infra* Sec. II.A.2. Third, Anthem cannot "collaterally attack" IDR determinations where, as here, the FAA's procedural provisions do not apply. *Corey v. N.Y. Stock Exch.*, 691 F.2d 1205, 1212-13 (6th Cir. 1982). And in any event, Anthem's claims relate to Defendants' NSA Scheme rather than specific IDR awards and seek relief that cannot possibly be construed as a collateral attack on any prior IDR award. *See Tex. Brine Co., L.L.C. v. Am. Arb. Ass'n*, *Inc.*, 955 F.3d 482, 489 (5th Cir. 2020); *infra* at Section II.B.

Third, the *Noerr-Pennington* doctrine does not immunize Defendants' fraudulent NSA Scheme. *See infra* at Section II.C. The doctrine only applies to First Amendment-protected activity petitioning the government; it does not apply to Defendants' misrepresentations as part of a private payment dispute before private companies (IDREs). *See Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *infra* at Section II.C.1. And regardless of whether Defendants engaged in First Amendment petitioning activity (they did not), *Noerr* immunity does not apply to their misrepresentations. *See Potters Med. Ctr. v. City Hosp. Ass'n*, 800 F.2d 568, 580 (6th Cir. 1986); *infra* at Section II.C.2.

Fourth, the IDR payment determinations Defendants procured through their fraudulent NSA Scheme do not collaterally estop Anthem's claims. *See infra* at Section II.D. Defendants have not and cannot present evidence of any determination to support invoking collateral estoppel, precluding the affirmative defense. *See e.g.*, *Garner v. Dep't of Def.*, 2:18-cv-1545, 2020 WL 209310, at *5 (S.D. Ohio Jan. 14, 2020). Defendants also cannot establish the elements of collateral estoppel because (1) no IDRE has (or can) hear Anthem's claims related to Defendants' NSA Scheme involving thousands of misrepresentations, *see United States v. Carpentieri*, 23 F. Supp. 2d 433, 435-36 (S.D.N.Y. 1998); (2) Defendants' fraud was neither litigated nor necessary to decide in any IDR proceeding, *CSX Transp., Inc. v. Bhd. Of Maint. of Way Emps.*, 327 F.3d 1309, 1318 (11th Cir. 2003); and (3) Anthem did not have a full and fair opportunity to contest Defendants' NSA Scheme, or even to contest eligibility in any IDR proceeding. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 (1982); *In re Leonard*, 644 F. App'x 612, 618 (6th Cir. 2016).

Fifth, and in the alternative, Anthem pleads a claim for vacatur of Defendants' fraudulently obtained IDR awards. *See* 9 U.S.C. § 10(a); *infra* at Section II.E.

Sixth, Anthem pleads all elements of its RICO claims. *See infra* at Section III. The "litigation activities" exemption has never been applied by the Sixth Circuit or this Court, no court has applied the doctrine to IDR, none of the policy reasons given by courts that have applied the doctrine to civil litigation activities support applying it to IDR, and the doctrine also does not apply because Defendants intentionally deceived a third party (*i.e.*, the Department of Health and Human Services). *See United States v. Pendergraft*, 297 F.3d 1198, 1206-07 (11th Cir. 2002); *United States v. Lee*, 427 F.3d 881, 890 (11th Cir. 2005); *infra* at Section III.A. Anthem pleads thousands of predicate acts of wire fraud with demonstrative examples in compliance with Rule 9(b). *United States ex rel. Marlar v. BWXT Y-12, L.L.C.*, 525 F.3d 439, 444-45 (6th Cir. 2008); *infra* at Section

III.B.1. It pleads that Defendants' NSA Scheme proximately caused its injuries. *Jackson v. Segwick Claims Management Services, Inc.*, 699 F. 3d 466, 482-83 (6th Cir. 2012); *infra* at Section III.B.2. It pleads a RICO enterprise-in-fact. *See Boyle v. United States*, 556 U.S. 938, 946 (2009); *infra* at Section III.C. It pleads a pattern of racketeering, involving the active participation of all Defendants in a scheme to profit from fraudulent submissions of IDR disputes. *See United States v. Birnie*, 193 F. App'x 528, 536 (6th Cir. 2006); *infra* at Section III.D. And it pleads a RICO conspiracy based on Defendants' agreement to violate RICO through their NSA Scheme. *See United States v. Sinito*, 723 F.2d 1250, 1260 (6th Cir. 1983); *infra* at Section III.E.

Seventh, Anthem states a claim under ERISA. *Infra* at Section IV. The ERISA-governed plans at issue delegate to Anthem the authority to recover overpayments, including those resulting from fraud, waste, or abuse, and Anthem pleads violations of specific ERISA statutes and regulations. *See* 29 U.S.C. §§ 1002(21)(A), 1132(a)(3), 1185e(c)(1)(B) and (2)(A);.

Eighth, Anthem adequately pleads claims under Ohio state law for violation of the Ohio Corrupt Activity Act, Ohio Rev. Code §§ 2923.31 *et seq.*; theft by deception, Ohio Rev. Code § 2913.01 *et seq.*; civil conspiracy, *see Huntington Nat'l Bank v. Guishard, Wilburn & Shorts, LLC*, 2:12-CV-1035, 2012 WL 5902916, at *7 (S.D. Ohio Nov. 26, 2012); violation of the Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165.01 *et seq.*; and common law fraud. *See infra* at Section V.

Ninth, Anthem adequately pleads claims against the LaRoques, directors of the LaRoque Family Enterprise. *Infra* at Section VI. The LaRoques exercise managerial and operational control of HaloMD and the Provider Defendants and coordinate the NSA Scheme to fraudulently deprive Anthem of millions of dollars; that is more than sufficient to state a claim for relief. *See Onyx Envtl. Servs., LLC v. Maison*, 407 F. Supp. 2d 874, 879 (N.D. Ohio 2005).

Tenth, Anthem asserts viable claims for declaratory and injunctive relief to prevent ongoing and future harm from the NSA scheme. *See infra* Sec. VII.

Finally, Defendants' request for attorney's fees is meritless for at least three reasons. *Infra* at Section IX. First, Ohio's "anti-SLAPP" statute only allows for fee shifting pursuant to a specific state-court procedural mechanism that Defendants have not followed here. *See* Ohio Rev. Code §§ 2747.01 *et seq.*; *Croce v. Sanders*, 459 F. Supp. 3d 997, 1028 (S.D. Ohio 2020). Second, the statute does not apply where, as here, Anthem brought "[a] legal action [ ] against a person primarily engaged in the business of selling or leasing goods or services" that "arises out of communication related to the person's sale or lease of the goods or services." Ohio Rev. Code § 2747.01(C)(3). Third, Anthem has stated a claim on which relief can be granted, barring any recovery of attorney's fees. *Id.* § 2747.04(C)(3)(a).

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INTRODUCTION

The Amended Complaint ("AC," at ECF No. 25) seeks to hold Defendants[1] liable for filing millions of dollars' worth of fraudulent disputes against Anthem[2] through the "independent dispute resolution" ("IDR") process created under the No Surprises Act ("NSA"). As part of their "NSA Scheme," Defendants: (1) submit thousands of knowingly false attestations to federal agencies certifying that ineligible disputes involve "qualified" services within the scope of the IDR process; (2) employ artificial intelligence ("AI") to overwhelm the IDR system with hundreds of disputes at a time; and (3) request payment at rates vastly beyond what the market provides.

Defendants' NSA Scheme works by exploiting the NSA's honor system, under which providers and their IDR agents self-certify dispute eligibility. The Departments of Health and Human Services ("HHS"), Labor ("DOL"), and Treasury (collectively, the "Departments") built an online screening tool (the "IDR Portal") through which parties submit disputes that they certify meet strict eligibility criteria. While this tool prevents parties from inadvertently submitting ineligible disputes, it cannot prevent fraud. There is no effective verification process; once Defendants make fraudulent submissions, the Departments automatically transmit the dispute to a certified IDR entity ("IDRE") tasked with making a payment determination.

Unlike court proceedings or commercial arbitrations, the IDR process contains no safeguards to prevent this type of fraud. The NSA itself does not delegate eligibility decisions to IDREs. Regulations direct IDREs to review eligibility, but they (1) only require IDREs to consider the providers' unilateral attestation of eligibility, and (2) do not require that IDREs consider health

[1] "Defendants" include (1) Evokes, LLC ("Evokes"), Midwest Neurology, LLC ("Midwest Neurology"), One Care Monitoring, LLC ("OCM"), Value Monitoring, LLC ("Value Monitoring"), and MPOWERHealth Practice Management, LLC ("MPOWERHealth") (collectively, the "Provider Defendants"); (2) HaloMD, LLC ("HaloMD"); and (3) Alla and Scott LaRoque (the "LaRoques"). All Defendants are members of the "LaRoque Family Enterprise." "Anthem" is Plaintiff Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield.

[2] "Anthem" is Plaintiff Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield.

plan objections or issue any written eligibility decisions. Making matters worse, IDREs only get paid if they find a dispute is 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[3] ignore the realities of the IDR process and Anthem's well-pleaded 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' NSA 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 in their entirety.

BACKGROUND

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

Before the NSA, out-of-network providers engaged in the financially devastating practice of "surprise billing." (AC, ECF No. 25 at PageID 138, ¶ 34.) Rather than go "in-network" and agree to reasonable 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.* at PageID 138-39, ¶¶ 34-36); H.R. Rep. No. 116-615 (2020), at 52-53. Patients faced astronomical bills for the difference between the billed charges and the amounts covered by health plans. (AC, ECF No. 25 at PageID 138, ¶¶ 32-34.)

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 for specific types of plans and services.

[3] Defendants' motions include Provider Defendants' Motion to Dismiss the Amended Complaint ("Provider Br." at ECF No. 38, 38-1), HaloMD's Motion to Dismiss Anthem's Amended Complaint ("HaloMD Br." at ECF No. 39), and the LaRoques' Motion to Dismiss Anthem's Amended Complaint ("Laroque Br." at ECF No. 40).

(AC, ECF No. 25 at PageID 130-31, 138, ¶¶ 1, 36.) If an out-of-network provider of NSA-covered services disagrees with the amount paid by a health plan, it has thirty business days to provide a notice of "open negotiation." (*Id.* at PageID 140, ¶¶ 38-40); 42 U.S.C. § 300gg-111(c)(1)(A). If the parties cannot reach a resolution in thirty days, and all other prerequisites are met, the provider may initiate IDR through the IDR Portal. (AC, ECF No. 25 at PageID 140-41, ¶ 41); *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, ECF No. 25 at PageID 141-42, ¶ 43); 42 U.S.C. § 300gg-111(c)(1); 45 C.F.R. § 149.510(a)(2)(xi), (b)(1), (b)(2). Among other requirements: (1) the patient must have coverage via a group health plan or health insurance issuer, and not a government plan like Medicare or Medicaid; (2) the dispute must not be governed by a state surprise billing law; and (3) the provider must have exhausted open negotiations and initiated the dispute in a timely manner. *See id.*

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

Because the NSA limits the IDR process to payment disputes over a "qualified IDR item or service" that meets strict eligibility criteria, (AC, ECF No. 25 at PageID 141-42, ¶ 43,) HHS requires providers to initiate IDR though an eligibility screening tool on the IDR Portal (https://nsa-idr.cms.gov/paymentdisputes/s/). (AC, ECF No. 25 at PageID 143, ¶ 48.) To initiate a dispute, the provider must answer "Qualification Questions," as well as submit an eligibility attestation, confirming that the eligibility criteria are met. (*Id.* at PageID 145-47, ¶¶ 53-61.) 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, ECF No. 25 at PageID 144, 145-46, 147 ¶¶ 49, 53-57,

60.) 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.* at PageID 145-46, ¶¶ 53-55.)

For example, one of the Qualification Questions on the IDR Portal asks when the party began the open negotiation process. (AC, ECF No. 25, at PageID 145, ¶ 54.) The page makes clear that "[t]he thirty business-day open negotiation period must elapse before starting the federal IDR process." *See id.* If the end of the 30-day open negotiation period is not within four business days of submission, the initiating party must explain why it qualifies for an extension, along with supporting documentation. (*Id.* at PageID 146, ¶ 56.) Otherwise, the initiating party cannot proceed with initiation. (*Id.* at PageID 145-46, ¶¶ 55-56.)

After answering all Qualification Questions, the provider must complete a Notice of IDR Initiation form with a signed attestation that "to the best of my knowledge . . . 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.* at PageID 146-47, ¶¶ 58-59.) By making that attestation and submitting the form, the provider causes a copy of the Notice of IDR Initiation, with the attestation, to be sent to the Departments, the IDRE, and the relevant health plan. (*Id.* ¶ 59.) Once the Notice of IDR Initiation is submitted, both parties are responsible for paying a $115.00 administrative fee that will not be refunded, even if the dispute is later found to be ineligible for IDR. (*Id.* at PageID 150, ¶ 73.)

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). IDR has 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 private entities (IDREs), not an identifiable judge or arbitrator. *See id.* IDRE payment 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, http://bit.ly/4heOcWQ. These 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), ECF No. 45-7, at PageID 851.)

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. The NSA itself does not provide a process for addressing eligibility. *See* 42 U.S.C. § 300gg-111. Regulations state that a health plan may submit 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 require HHS to share these objections with the IDRE. *See id.* Instead, the regulations state that IDREs "must review the information submitted in the notice of IDR initiation"—which only contains the provider's attestation of eligibility—"to determine whether the Federal IDR process applies." (AC, ECF No. 25 at PageID 149, ¶ 68); 45 C.F.R. § 149.510(c)(1)(v). No law or regulation requires IDREs to consider information beyond the notice of IDR initiation with the provider's attestation. *See* 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) addressing eligibility. *See id*.

2. IDREs Have a Financial Stake in Eligibility Decisions.

IDRE eligibility "decisions" are further compromised by a perverse economic incentive that would immediately disqualify a factfinder in any court or arbitration: IDREs are not paid unless they decide that a dispute is eligible for IDR. (AC, ECF No. 25 at PageID 150, 159, ¶¶ 74, 108); 42 U.S.C. § 300gg-111(c)(5)(F); *see CALENDAR YEAR 2023 FEE GUIDANCE FOR THE FEDERAL INDEPENDENT DISPUTE RESOLUTION PROCESS UNDER THE NO SURPRISES ACT*, CMS, http://bit.ly/48xP1Yc ("[C]ertified IDR entities may not collect fees for those cases that they ultimately determine are ineligible for the Federal IDR process."). This means that health plans can only prevail in their objections to eligibility if the IDRE both: (1) expends the resources necessary to appropriately evaluate eligibility (which the regulations do not require), and (2) reaches a decision requiring it to forego any compensation.

IDREs' fees range from several hundred to over a thousand dollars per dispute. (AC, ECF No. 25 at PageID 150, ¶ 73.) HaloMD alone submitted 134,318 disputes in the second half of 2024. (*Id*. at PageID 157-58, ¶ 101.) The IDREs deciding those disputes stand to gain tens of millions of dollars if, and only if, they decide HaloMD's disputes are eligible for IDR and/or otherwise proceed to a payment determination.

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

Unless the IDRE decides that a dispute is ineligible, it proceeds to make a payment determination. (AC, ECF No. 25 at PageID 149, ¶ 69.) The payment determination process is often described as "baseball-style" or "final offer" dispute resolution. (*Id.* ¶ 70.) The provider and health plan each submit payment offers to the IDRE, and the IDRE must select one of the two offers. (*Id.*) Neither the provider nor the payor gets to examine, contest, or dispute or rebut the other's offer. (*See id.*)

In choosing between offers, the NSA requires IDREs to consider the Qualifying Payment Amount ("QPA") (an approximation of the plan's in-network rate for that service) and several "additional circumstances," such as the provider's quality, market share, case mix, and scope of services. (AC, ECF No. 25 at PageID 149, ¶ 71); 42 U.S.C. § 300gg-111(c)(5)(C). Although IDREs must issue a written payment determination, the regulations do not require any specific explanation or reasoning. *See* 45 C.F.R. § 149.510(c)(4)(vi). In practice, IDREs typically provide threadbare decisions containing the dollar amount selected for the dispute and a boilerplate list of statutory factors considered, with no explanation as to why those factors support the ultimate determination. (AC, ECF No. 25 at PageID 151, ¶ 78); *see No Surprises Act Arbitrators Vary Significantly in Their Decision Making Patterns*, HEALTH AFFAIRS, https://bit.ly/3XQUUcO.

IDR payment determinations overwhelmingly favor providers. In the most recent reporting period, providers prevailed in 85% of payment determinations, with prevailing offers exceeding the QPA 85% of the time. (AC, ECF No. 25 at PageID 151, ¶¶ 76-78.) When providers prevail, they do so at a median rate that is 4.5 times greater than the QPA. (*Id.*) In other words, by accessing the IDR system, providers recover a median rate over 450% higher than in-network market rates for identical services. (*Id.*) By flooding the NSA's IDR process with knowingly ineligible disputes, Defendants in particular have secured some payments that are more than 2,000% higher than their billed charges. (*See, e.g.*, *id*. at PageID 178, ¶ 179.)

D. The Parties.

Anthem is an Ohio corporation with its principal place of business in Mason, Ohio. (*Id*. at PageID 134, ¶ 13.) It offers and administers claims for health insurance and self-funded health benefit plans for Ohio residents and companies. (*Id*. at PageID 136-37, ¶¶ 25-30.)

Evokes, Midwest Neurology, OCM, and Value Monitoring are Ohio and Delaware limited liability companies, provide interoperative neuromonitoring ("IONM") services to Ohio residents,

and are each subsidiaries of MPOWERHealth. (*Id*. at PageID 135, 165-67, ¶¶ 19-22, ¶¶ 132-39.)

MPOWERHealth is a Delaware limited liability company based in Texas; its founder, ultimate sole owner, and CEO is Defendant Scott LaRoque. (*Id*. at PageID 134, 163, ¶¶ 17, 127.) Through total control of MPOWERHealth, LaRoque exerts managerial and operational control over all of its subsidiaries. (*Id.* ¶ 127.) MPOWERHealth recruits physicians and technicians for its subsidiaries and provides and coordinates their clinical services and legal, billing, and IDR functions. (*Id*. at PageID 164-66, ¶¶ 130-32.) LaRoque's wife, Defendant Alla LaRoque, was MPOWERHealth's COO and is a current board member. (*Id*. at PageID 134, 167, 170 ¶¶ 16, 140–141, 151.)

HaloMD is a Delaware limited liability company based in Texas that bills itself as "the premier expert in Independent Dispute Resolution." (AC, ECF No. 25 at PageID 168, ¶ 144.) It is ultimately owned by Scott and Alla LaRoque, who exert managerial and operational control over the company. (*Id*. at PageID 134, 163, 167 ¶¶ 15, 126-27, 140-42.) Alla LaRoque is the founder and President of HaloMD (*Id*. at PageID 134, 167, 170, ¶¶ 16, 140–41, 151.) HaloMD submits massive numbers of IDR disputes for Provider Defendants and other providers using AI and other automated tools. (*Id.* at PageID 168-69, ¶¶ 143-48.) HaloMD operates on a commission model, taking a portion of the amount recovered through IDR on behalf of providers. (*Id.* at PageID 169, ¶ 149.)

HaloMD, MPOWERHealth, and the Provider Defendants share multiple overlapping business and mailing addresses. (AC, ECF No. 25 at PageID 134-35, 164, 166-67, 170-71, ¶¶ 14, 17, 21, 22, 128, 136, 139, 153, 158.) Roxy LaRoque, MPOWERHealth's Director of Client Experience, is the Authorized Official for hundreds of provider entities, including most of the Provider Defendants. (*Id*. at PageID 165, 167, ¶¶ 131, 138–39.) Other key executives, such as Dr.

Stephen Houff (President of MPOWERHealth and CEO of Medsurant Health, an MPOWERHealth subsidiary) and Brenda Thiele (Senior Manager of Treasury at MPOWERHealth), likewise hold official positions across related entities. (*Id*. at PageID 165-66, ¶¶ 132, 135.) Megan Rausch currently serves as COO of HaloMD and was previously Vice President of Revenue Cycle Management at MPOWERHealth. (*Id*. at PageID 170, 173-74, 175, 138, ¶¶ 152, 163, 170, 200.)

The websites for HaloMD and MPOWERHealth are also nearly identical in design and structure, and their contact pages are directly linked. (*Id*. at PageID 171, ¶ 155.) HaloMD's "Join Our Team" page directs applicants back to MPOWERHealth's domain. (*Id*.) Advertisements for jobs posted on the internet conflate the various entities. (*Id*.) For example, one advertisement for an "IDR Specialist" lists the employer as MPOWERHealth, but the body of the description under the section "Who We Are" lists HaloMD as the employer and describes HaloMD. (*Id*.)

E. Defendants' Scheme

Under the direction and control of Scott and Alla LaRoque, HaloMD and the Provider Defendants formed the LaRoque Family Enterprise to exploit the IDR process and defraud Anthem and other health plans on a massive scale. (AC, ECF No. 25 at PageID 152, 162-71, ¶¶ 81, 122-56.) To conduct their "NSA Scheme," Defendants: (1) use interstate wires to make knowingly false attestations of eligibility to Anthem, the Departments, and IDREs; (2) strategically initiate massive numbers of IDR disputes simultaneously 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*. at PageID 151-53, ¶¶ 80-86.) Defendants often prevail on these disputes because: (1) there is no meaningful opportunity for Anthem to contest their fabrications; and (2) IDREs are financially incentivized and permitted by regulation to simply accept Defendants' misrepresentations as true. (*E.g.*, *id*. at PageID 149, 150 ,159, 199, ¶¶ 68, 74, 109, 283.)

Each defendant plays a role in the scheme. Evokes, Midwest Neurology, OCM, and Value Monitoring generate claims for service that HaloMD and MPOWERHealth use to flood the IDR system with ineligible disputes. (*E.g.*, *id*. at PageID 132, 163, 168, 171, 172-84, ¶¶ 5, 7-9, 126, 143, 156, 159-205.) MPOWERHealth coordinates, facilitates, and directs the other Provider Defendants' operations and funnels their claims into IDR through HaloMD. (*See, e.g.*, *id.* at PageID 132, 156, 163-66, ¶¶ 7-9, 94-95, 126-32.) HaloMD takes the claims generated by Provider Defendants and, in coordination with MPOWERHealth, uses them to systematically flood the IDR system with fraudulent disputes. (*E.g.*, *id.* at PageID 152, 168-69, 172-84, ¶¶ 83, 143-49, 159-205.) Scott and Alla LaRoque manage and coordinate each of the corporate Defendants and the overall scheme. (*E.g.*, *id.* at PageID 134, 163, 166-71, ¶¶ 15-18, 126-27, 134, 140-43, 150-51, 154, 156.)

At the heart of their NSA Scheme, Defendants knowingly make false representations and attestations of eligibility in submissions to the IDR Portal. (*Id*. at PageID 131-32, 154-56, ¶¶ 4, 87-95.) These false statements are necessary steps for accessing the IDR process. (*Id*. ¶ 4.) Their false representations may include, for example, creating and uploading false documentation to misrepresent an extension of open negotiation periods. (*Id*. ¶ 91.) Defendants also misrepresent that claims covered by the Ohio surprise billing law are not covered by the state law and eligible for the IDR process. (*Id.* at PageID 152, 154-55, 173-84, ¶¶ 82, 90, 161-205.) These are not isolated events; Anthem estimates that thousands of Defendants' disputes, including almost half that reached a payment determination, are ineligible for IDR. (*Id*. at PageID 152, 159, 162, 198, ¶¶ 81, 110, 120, 278.) Defendants know that their representations of eligibility are false when they make them because of, among other things, the nature of the claims, the timing of their dispute submissions, the warnings and screening mechanisms on the IDR Portal, and Anthem's direct and

repeated notices to Defendants that their claims are ineligible for the IDR process. (*E.g.*, *id.* at PageID 154-56, 197, ¶¶ 88-93, 275.)

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, and health plans would need to devote several hours to manage each dispute. 86 Fed. Reg. 55,980, 56,067-70 (Oct. 7, 2021). Yet in 2024, almost 1,500,000 disputes were initiated. (AC, ECF No. 25 at PageID 157, ¶ 99.) 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. (*Id*. at PageID 157-58, ¶ 101.)

Defendants strategically overwhelm IDR safeguards by using automated AI tools to submit massive numbers of disputes all at once. (*Id*. at PageID 132-33, 152, ¶¶ 9, 83.) For example, on September 25, 2024, Defendants initiated 132 separate IDR disputes against Anthem; Anthem's records show more than 80% were ineligible for IDR. (*Id.* at PageID 158, ¶ 103.) Defendants know that Anthem has only three business days to respond to their IDR initiation with any eligibility objections. *See supra*. And they know that IDREs must complete the entire IDR process and issue payment determinations within thirty 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, ECF No. 25 at PageID 153, 156-59, ¶ 84, 96-109.) The scheme succeeds despite Anthem's frequent objections to eligibility. (*E.g.*, *id*. at PageID 159, 176, 178, 179, 181, 183, ¶¶ 107, 172, 178, 183, 191, 197, 204.)

The final element in Defendant's NSA Scheme is what makes it so lucrative: Defendants submit, and often prevail with, hugely inflated payment demands. (AC, ECF No. 25 at PageID 160, ¶ 111.) These demands far exceed what Provider Defendants could recover in a competitive

market and exceed Provider Defendants' "inflated," "non-market-based" billed charges. (*Id.* ¶¶ 111, 114.)

For example, on October 1, 2024, Evokes provided a health care service to a member of a fully-insured health plan administered by Anthem. (*Id*. at PageID 176, ¶ 174.) Evokes billed Anthem $361.25 for the service. (*Id*.) Because it was covered by a fully-insured plan, the claim was subject to the state surprise billing law and, therefore, not by the NSA. (*Id*.) Anthem informed Evokes of this fact when it issued payment, noting "[t]his was adjusted to follow Ohio balance billing laws and rules[.]" (*Id*. ¶ 175.) Nonetheless, HaloMD sent Anthem a notice of open negotiation on November 7, 2024. (*Id*. at PageID 177, ¶ 176.) That same day, Anthem responded to Evokes, specifically noting that the dispute did not qualify for IDR. (*Id*.) Had the dispute qualified for IDR, the deadline to initiate the process would have been December 12, 2024. (*Id*. ¶ 177.) Yet HaloMD initiated IDR on December 24, 2024, purposefully evading the measures on the IDR Portal meant to prevent such late initiations. (*Id*.) Anthem objected to eligibility, but the IDRE proceeded to make a payment determination anyway and awarded Evokes $7,606.54. (*Id.* at PageID 178, ¶¶ 178-79.) Anthem also paid $512.00 in related IDR fees. (*Id.*) In short, Evokes knowingly recovered more than twenty-one times the original billed amount in a dispute that it knew was ineligible for the IDR process.

F. Defendants' Scheme Damages Anthem in Multiple Respects.

Defendants' scheme damaged Anthem in multiple independent ways. First, every time Defendants submit one of their thousands of fraudulent disputes against Anthem to the IDR Portal, Anthem must pay a $115.00 administrative fee to HHS, which Anthem cannot recover even if the dispute is deemed ineligible. (AC, ECF No. 25 at PageID 150, ¶ 73.) Second, Anthem must spend enormous amounts of time and money to identify and contest Defendants' thousands of fraudulent disputes. (*Id*. at PageID 159, ¶ 107.) Third, through their fraudulent submissions, Defendants have

(so far) obtained tens of millions of dollars in improper IDR awards against Anthem. (*Id*. at PageID 152, 159, 161, ¶¶ 81, 110, 116.) Fourth, for each award in Defendants' favor, Anthem must also pay hundreds of dollars in fees to the IDRE. (*Id*. at PageID 150, 152, 158, 159, 161, ¶¶ 73, 81, 103, 110, 118.) To date, Anthem has incurred hundreds of thousands of dollars in fees based on Defendants' fraudulent disputes, and has paid millions of dollars in ineligible and/or inflated IDR payments based on Defendants' knowingly false statements. (*Id*. at PageID 158-59, 194, ¶¶ 103-05, 256.)

G. Causes of Action.

Anthem asserts ten causes of action against all Defendants for violations of federal RICO (Counts I and II) and the OCAA (Count III); theft by deception (Count IV); civil conspiracy (Count V); violations of the ODTPA (Count VI); fraudulent misrepresentation (County VII); vacatur of IDR Awards (in the alternative) (Count VIII); violations of ERISA (Count IX); and equitable declaratory and injunctive relief (Count X). (*See* AC, ECF No. 25 at PageID 179-83, 184-203, 184-203, ¶¶ 206-302.)

LEGAL STANDARD

On a motion to dismiss, the court must accept the facts in the complaint as true and construe them in the light most favorable to the plaintiff. *See Wamer v. Univ. of Toledo,* 27 F.4th 461, 466 (6th Cir. 2022). A plaintiff need only give a defendant fair notice of its claims 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.'" *Wamer*, 27 F.4th at 466 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007)).

Rule 9(b)'s pleading standard applies to claims of fraud. "Where a complaint alleges a complex and far-reaching fraudulent scheme," Rule 9(b) is satisfied so long as the scheme is "pleaded with particularity and the complaint [] also 'provide[s] examples of specific' fraudulent

conduct that are representative samples of the scheme." *United States ex rel. Marlar v. BWXT Y-12, L.L.C.*, 525 F.3d 439, 444–45 (6th Cir. 2008) (citation omitted).

ARGUMENT

I. Defendants' Jurisdictional Arguments Fail.

A. Anthem Pleads Standing.

As a direct and immediate consequence of Defendants' NSA Scheme, Anthem incurred millions of dollars of liability for fees and awards based on ineligible disputes and the operational expenses and burden of responding to Defendants' fraud. *See supra* at 12-13. Anthem pleads standing because it alleges that 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 Anthem incurring (1) IDR and administrative fees for ineligible disputes, (2) the operational burden and expense to address Defendants' false scheme, and (3) the liability for fraudulently procured IDR awards. *See supra* at 12-13.

Defendants claim the AC fails to plead that Anthem ever paid any IDR awards. (HaloMD Br., ECF No. 43 at PageID 522; Provider Br., ECF No. 38-1 at PageID 283-87.) But the AC expressly alleges that "[a]s a result of Defendants' deceit, Anthem was ordered to pay, and did pay, millions of dollars in ineligible and/or inflated IDR payment determinations." (AC, ECF No. 25 at PageID 194, ¶ 256 (emphasis added)).[4] Moreover, regardless of whether Anthem has paid

[4] Providers cite the inapposite decision in *Scheid v. Fanny Famer Candy Shops, Inc.*, 859 F.2d 434, 437 (6th Cir. 1988), to suggest that the Court should draw inferences against Anthem based on the supposed omission of specific language in the AC. But the law is clear that the Court must "construe the complaint in the light most favorable to the plaintiff . . . and draw all reasonable inferences in favor of the plaintiff." *E.g.*, *Eastep v. City of Nashville, Tenn.*, 156 F. 4th 819, 826 (6th Cir. 2025) (internal quotation marks omitted).

each fraudulently-procured IDR award to date, "a liability, including a contingent liability, may be a cognizable legal injury." *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 55 (2d Cir. 2016) (citing *Clinton v. City of New York*, 524 U.S. 417, 430–31 (1998)).

Traceability: "Article III requires no more than *de facto* causality," and "traceability is satisfied" if Anthem'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 Galaria v. Nationwide Mut. Ins. Co.*, 663 F. App'x 384, 390 (6th Cir. 2016) ("Article III traceability . . . requires 'more than speculative but less than but-for' causation.") (quotation omitted). The AC far exceeds the requirement to plead that Anthem's injuries are sufficiently attributable to Defendants' actions.

HaloMD incorrectly suggests that Anthem only alleges damages arising from IDR awards, and that IDREs break the causal chain between Defendants' fraud and Anthem's injury. (HaloMD Br., ECF No. 43 at PageID 522-23; Provider Br., ECF No. 38-1 at PageID 284.) But as soon as Defendants submit a fraudulent dispute through the IDR Portal, Anthem must (1) spend time and money to identify the fraud and submit an objection to eligibility (*e.g.*, AC, ECF No. 25 at PageID 159, 187, 191, ¶¶ 107, 217, 238), and (2) pay a $115.00 administrative fee that it cannot recover even if "the IDRE determines that the dispute does not qualify for IDR[.]" (*Id.* at PageID 150, ¶ 73.) Anthem incurs these damages even before an IDRE is selected.

As to actual awards, traceability does not require that "the defendant's actions are the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 169 (1997); *see also Galaria*, 663 F. App'x at 390 ("[T]he fact that an injury is indirect does not destroy standing as a matter of course.") (quotation omitted). IDR awards are only issued because of Defendants' misrepresentations. If Defendants accurately answered eligibility questions on the IDR Portal, the "federal IDR website [would] not permit the[m] . . . to proceed and seek payment for the service."

(AC, ECF No. 25 at PageID 145-46, 147, ¶¶ 55, 60.) Absent Defendants' misrepresentations, IDREs would have no basis to resolve eligibility disputes and awards in their favor.

HaloMD's argument that Anthem failed to contest eligibility before the IDREs and is somehow responsible for its own injury is wrong. (*See* HaloMD Br., ECF No. 43 at PageID 523.) To the contrary, Anthem does allege that it contested eligibility after Defendants initiated IDR disputes. (*See, e.g.*, AC, ECF No. 25 at PageID 159, 178-79, 181, ¶¶ 107, 110, 178, 183, 191.) The argument is also irrelevant to standing. HaloMD's sole cited authority, *NOCO Co. v. OJ Com., LLC*, 35 F.3th 475, 481 (6th Cir. 2022), addressed proximate causation. As explained in Section III.B.2, Anthem alleges proximate cause. "But for Article III standing purposes, proximate causation is not an element [Plaintiff] must establish." *Grow Mich., LLC v. LT Lender, LLC*, 50 F.4th 587, 593 (6th Cir. 2022) (internal quotation marks and brackets omitted).

Redressability: Anthem seeks damages for past injuries, and when "Plaintiffs seek compensatory damages for their injuries, . . . a favorable verdict would provide redress." *Galaria*, 663 F. App'x at 390-91. Anthem's injuries arise directly from Defendants' thousands of fraudulent attestations. *See supra*. And an order enjoining Defendants' NSA Scheme, as sought in the AC, will redress future injury so long as it "reduce[s] to some extent" the likelihood of future harm. *See Mass. v. EPA*, 549 U.S. 497, 526 (2007).[5] Anthem easily meets this standard.

B. Anthem Pleads Personal Jurisdiction over HaloMD, MPOWERHealth, and the LaRoques.

Defendants do not dispute that personal jurisdiction is proper over Midwest Neurology (an Ohio LLC), Evokes (an Ohio resident), OCM, and Value Monitoring. (AC, ECF No. 25 at PageID

[5] HaloMD claims that Anthem should have pursued a new process—released after Anthem filed suit—to petition to reopen each of their thousands of IDR proceedings. (HaloMD Br., ECF No. 43 at PageID 21.) 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*, ECF No. 45-7, at PageID 851.) The new process also does not state that it provides an exclusive remedy, and it could not remedy or enjoin Defendants' NSA Scheme.

172-84, ¶¶ 159-205.) HaloMD, MPOWERHealth and the LaRoques are also subject to personal jurisdiction in this district by virtue of having been served under two statutes—ERISA and RICO—that provide for nationwide service of process. They are each also subject to specific jurisdiction here pursuant to Ohio's long-arm statute, Ohio Rev. Code § 2307.382.

ERISA Jurisdiction: HaloMD, MPOWERHealth and the LaRoques are subject to personal jurisdiction under ERISA's national service of process provision, which confers "nationwide personal jurisdiction" in any federal court over any defendant who has "minimum contacts with the United States." *See Med. Mut. of Ohio v. deSoto*, 245 F.3d 561, 567 (6th Cir. 2001); *see also Canaday v. Anthem Companies, Inc.*, 9 F.4th 392, 398 (6th Cir. 2021) (ERISA provides "nationwide service on defendants and personal jurisdiction over them in any federal district court") (citing 29 U.S.C. § 1132(e)(2)).

As the sole basis for challenging ERISA jurisdiction, Defendants argue that Anthem fails to plead a viable ERISA claim "under 29 U.S.C. § 1132(a)(3)." (HaloMD Br., ECF No. 43 at PageID 524; Provider Br., ECF No. 38-1 at PageID 297, n.19; LaRoque Br., ECF No. 40 at PageID 481.) As detailed in Section IV, Anthem alleges a viable claim under 29 U.S.C. § 1132(a)(3). Accordingly, Defendants are all subject to the Court's personal jurisdiction.[6]

RICO Jurisdiction: Independently, HaloMD, MPOWERHealth and the LaRoques are also subject to personal jurisdiction under RICO. A plaintiff may establish jurisdiction over an out-of-state defendant under RICO § 1965(b) by showing: "(1) at least one other defendant has minimum contacts with the forum state, and (2) the 'ends of justice' require that the district court in question is the one in which the matter should be heard." *Doe v. Varsity Brands, LLC*, 1:22-cv-

[6] Courts in this district have also exercised pendent personal jurisdiction over defendants for state law claims against them that relate to an ERISA claim. *E.g.*, *Ciena Healthcare Mgt. Inc. v. Grp. Resources Inc.*, No. 24-cv-12362, 2025 WL 2773128, at *4 (E.D. Mich. Sept. 26, 2025).

02139, 2023 WL 4935933, at *14 (N.D. Ohio Aug. 2, 2023) (citing *Peters Broad. Eng'g, Inc. v. 24 Capital, LLC*, 40 F.4th 432, 441-42 (6th Cir. 2022)).

Anthem satisfies the first requirement; Defendants do not (and cannot) dispute, the Court has jurisdiction over Midwest Neurology, Evokes, OCM, and Value Monitoring. *Supra* at 16-17.

Anthem also satisfies the second requirement because the "ends of justice" warrant extending jurisdiction to their co-conspirators. "There are several factors that courts consider" when evaluating the ends of justice, including "'the desirability of having the whole action litigated in one court,' 'the cost of the delay involved in transferring the case to another forum,' and 'the general balance of hardships between plaintiff and defendant.'" *Bon Secours Mercy Health, Inc. v. DevonMD, LLC*, 1:20-cv-919, 2025 WL 676446, at *10 (S.D. Ohio Mar. 3, 2025) (internal citation omitted).[7] All of these factors weigh in favor of exercising jurisdiction in this case.

Defendants do not and cannot dispute that it is desirable to have the whole action litigated in one court. Dismissal of any one Defendant would cause "significant delay, redundancy, and expense for multiple parties" by requiring Anthem to simultaneously litigate the same claims from the same conspiracy in multiple forums. *Varsity Brands, LLC*, 2023 WL 4935933 at *16 (finding it "highly desirable to have the entire action litigated in one court" where "[t]here are eleven different defendants involved in this matter" and the claims asserted were "identical"); *see also Bon Secours*, 2025 WL 676446, at *10 (dismissal would "require the claims in this action to be simultaneously litigated" in another court) (internal citation omitted).

Nor do Defendants articulate any hardship from litigating in Ohio. Neither HaloMD nor MPOWERHealth assert hardship at all. And while the LaRoques make the conclusory assertion

[7] Defendants argue that the ends of justice are not served because the claims asserted against them do not "concern any Ohio-related actions." (Provider Br., ECF No. 38-1 at PageID 297, n.19; *see also* HaloMD Br., ECF No. 43 at PageID 524; LaRoque Br., ECF No. 40 at PageID 481.) This is not among the factors that courts consider. And as a factual matter, this is simply false for the reasons addressed in the discussion of the Ohio long-arm statute below.

that it would be "tremendously more difficult and burdensome" to litigate in this district (LaRoque Br., ECF No. 40 at PageID 481), they provide no supporting facts or reasoning. "Any hardship would be minimal given [their] relationship to"—and shared counsel with—the other defendants in this case. *See Bon Secours*, 2025 WL 67446, at *10. The LaRoques "can easily conduct most of their litigation via electronic means." *See Varsity Brands, LLC*, 2023 WL 4935933, at *17. They cannot claim legitimate hardship.

Ohio's Long-Arm statute: This Court also has specific jurisdiction over Defendants pursuant to Ohio Rev. Code §§ 2307.382(A) and (C). Ohio's long-arm statute "permit[s] jurisdiction over nonresident defendants who are *transacting any* business in Ohio." *Ky. Oaks Mall Co. v. Mitchell's Formal Wear, Inc.*, 559 N.E.2d 477, 480 (Ohio 1990) (citing Ohio Rev. Code § 2307.382(A)(1)) (emphasis in original). HaloMD and MPOWERHealth each contracted with in-state Defendants, Ohio businesses, to provide claims processing services, and regularly and repeatedly participated in submitting claims for medical services provided to Ohio residents. (*See* AC, ECF No. 25 at PageID 132-33, 135, 161-62, 163, 166, 168-69, 170, 171, ¶¶ 9, 19-22, 119-20, 126, 133-35, 143-47, 153, 156.) Further, as part of submitting those claims, HaloMD and MPOWERHealth engaged in negotiations with Anthem, an Ohio resident, and purposefully caused tortious harm to Anthem in Ohio. (*See e.g.*, *id.* at PageID 173-74, 175, 182, 188, 189, 192, 194, 195, ¶¶ 161-63, 169-70, 195, 221-22, 229, 245, 256, 260-61, 264); *e.g.*, *Schneider v. Hardesty*, 669 F.3d 693, 700 (6th Cir. 2012) ("[D]istrict courts have found that fraudulent communications or misrepresentations directed at Ohio residents satisfy § 2307.382(A)(6)'s requirements."); *Paglioni & Assoc., Inc. v. Winnercomm, Inc.*, 2:06-cv-00276, 2007 WL 852055 at *9 (S.D. Ohio Mar. 16, 2007) ("If the parties negotiated in the forum state . . . the defendant transacted business in the forum state."); *MedChoice Fin. LLC v. ADS Alliance Data Sys., Inc.*, 857 F. Supp. 2d 665, 679

(S.D. Ohio 2012) (jurisdiction was proper where defendant negotiated a contract in Ohio, communicated with a bank in Ohio, and "caused fraudulent transactions to be submitted in Ohio").

Exercising the Court's jurisdiction over the out-of-state Defendants also meets the Sixth Circuit's three-prong test for Due Process because: (1) Defendants purposefully availed themselves of the privilege of doing business in Ohio and committed fraud on an Ohio company; (2) Anthem's causes of action arise from the effects of Defendants' acts in Ohio, and (3) Defendants' acts and their consequences have enough of a connection with Ohio to make jurisdiction reasonable. *See Root, Inc. v. Silver*, 2:23-cv-512, 2024 WL 85057, at *7 (S.D. Ohio Jan. 8, 2024); *Bird v. Parsons*, 289 F.3d 865, 875 (6th Cir. 2002) (a "lenient standard" applies when evaluating the "arising from" criterion); *Ardent Techs. Inc. v. Advent Svcs. LLC*, 3:23-cv-137, 2023 WL 5588547, at *8 (S.D. Ohio Aug. 29, 2023) ("[T]his case clearly implicates Plaintiffs' business interests and Ohio possesses an undeniable stake in protecting the business interests of its citizens.").

II. Defendants Cannot Avoid Judicial Review of Their Fraud.

Defendants seek dismissal based on plainly inapplicable statutory and doctrinal grounds. Defendants: (1) misquote the NSA's "Judicial Review Provision" (42 U.S.C. § 300gg-111(c)(5)(E)(i)(II)) to argue that Anthem 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. None of these arguments immunize Defendants' NSA Scheme.

A. The NSA's Judicial Review Provision Does Not Apply to Anthem's Claims.

Defendants' arguments that the NSA's Judicial Review Provision bars Anthem's claims fail for three independent reasons. First, the Judicial Review Provision applies solely to a payment determination from an IDRE; it does not apply to Defendants' NSA Scheme, through which they

submitted thousands of knowingly ineligible disputes. 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 Anthem has pleaded "a case described in" 9 U.S.C. § 10(a)(1) and (a)(4) to support "judicial review." Third, Anthem's claims are not a collateral attack on IDR payment determinations; Anthem asserts the disputes should never have taken place in the first instance and seeks, *inter alia*, prospective injunctive relief to prevent future submission of fraudulent disputes.

1. The Judicial Review Provision Does Not Apply to the NSA Scheme.

The plain language of the Judicial Review Provision applies solely to an IDRE payment determination. 42 U.S.C. § 300gg-111(c)(5)(E). It does not limit judicial review of Defendants' NSA Scheme, through which they submitted thousands of knowingly ineligible disputes. *See id.*[8]

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). "To the extent there is ambiguity in the [provision] it must be resolved in [] favor" of providing for judicial review. *Salinas v. United States R.R. Ret. Bd.*, 592 U.S. 188, 196 (2021) (internal quotation and citation omitted); *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 162 (2025) ("[A]mbiguity does not suffice to deprive a party of that judicial review."). This presumption applies even when reviewing "statutes that [expressly] limit or preclude review." *Cuozzo Speed Techs. v. Com. for Intell. Prop.*, 579 U.S. 261, 273 (2016). "[I]n other words, the

[8] None of Defendants' authorities addressing the NSA involved a claim challenging IDR eligibility, much less a widespread scheme to initiate thousands of knowingly ineligible disputes. *See Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025) (holding only that the NSA "contains no express right of action to enforce or confirm an IDR award"); *Modern Orthopaedics of N.J., v. Premera Blue Cross.*, 2:25-cv-01087, 2025 WL 3063648, at *14 (D.N.J. Nov. 3, 2025) (same); *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 620 (5th Cir. 2025) (dismissing claim by plaintiff who disputed payment determination, not eligibility).

presumption dictates that such provisions must be read narrowly." *El Paso Natural Gas Co. v. United States*, 632 F.3d 1272, 1276 (D.C. Cir. 2011).

There is no indication—much less "clear and convincing indications"—that Congress intended to bar judicial review of Defendants' NSA Scheme. 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)(i)(II). 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 thus only precludes review of an individual "Payment Determination." *See id.* Defendants ignore this narrowing language. (Provider Br., ECF No. 38-1 at PageID 269; HaloMD Br., ECF No. 43 at Page ID 323.) Nothing in the NSA suggests that IDREs will decide disputes over IDR eligibility; it certainly does not state that a scheme involving thousands of ineligible disputes is immune from judicial review.

The Departments' NSA-implementing regulations confirm that the Judicial Review Provision is strictly limited to an IDRE payment determination, and there is no limitation that applies to the NSA Scheme.[9] Under 45 C.F.R. § 149.510(c)(4)(vii) ("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 [.]" 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 regulatory language addressing IDRE decisions on eligibility appears in a different provision: paragraph (c)(1)(v) ("[T]he certified IDR

[9] HHS could not use a regulation to expand a statutory bar on judicial review. *See Kucana v. Holder*, 558 U.S. 223, 248 (2010) ("If Congress wanted the jurisdictional bar to encompass decisions specified . . . by regulation along with those [specified] by statute . . . Congress could easily have said so.").

entity selected must . . . determine whether the Federal IDR process applies."). Like the NSA itself, these regulations confirm the limitation on judicial review does not apply to any decisions regarding eligibility, which is at the heart of Defendants' fraud.

Congress has created an extremely narrow restriction on judicial review that applies exclusively to an IDRE's payment determinations "under subparagraph (A)." 42 U.S.C. § 300gg-111(c)(5)(E). Had Congress intended to broadly 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 the Immigration and Nationality Act ("INA") cited by Provider Defendants (Provider Br., ECF No. 38-1 at PageID 276). *See Patel v. Garland*, 116 F.4th 617, 622 (6th Cir. 2024) (applying provision of INA stating that "no court shall have jurisdiction to review . . . any judgment regarding the granting of relief under" five separate INA provisions).[10]

Congress's decision to limit judicial review solely as to an IDRE's payment determination—and not issues involving eligibility—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 process—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 AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986). Consistent with this principle, the NSA does not prevent this Court from reviewing Defendants' NSA Scheme involving thousands of knowing misrepresentations as to eligibility.

[10] Provider Defendants cite a series of inapposite cases addressing an unrelated issue: whether certain preconditions for seeking judicial review under other statutes constitute "a jurisdictional requirement" or "simply a mandatory claim-processing rule." *Riley v. Bondi*, 606 U.S. 259, 263 (2025) ("30-day filing deadline" under the INA was not jurisdictional); *Santos-Zacaria v. Garland*, 598 U.S. 411, 431 (2023) (exhaustion requirement under INA not a jurisdictional precondition to judicial review); *Quickway Transp., Inc. v. Nat'l Lab. Rels. Bd.*, 117 F.4th 789, 818 (6th Cir. 2024) (provision barring review "of objections not raised before the Board should be considered jurisdictional, not merely a claim-processing rule.").

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 "[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 party may challenge an arbitration award. *See* 9 U.S.C. § 10(a)(1)-(4). 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,* 140 F.4th at 276 ("Congress chose not to incorporate § 9 [governing award confirmation] into the NSA.").

In contrast to the NSA, Congress has expressly incorporated 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:

> 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.").

None of Defendants' authorities support the proposition that "the exclusive means to challenge an IDR award is to seek vacatur under the FAA." (Provider Br., ECF No. 38-1 at PageID 275.) Two cases addressed efforts to enforce IDR payment determinations and simply held that the NSA "contains no express right of action to enforce or confirm an IDR award." *Guardian Flight*, 140 F.4th at 275; *Modern Orthopaedics of NJ*, 2025 WL 3063648, at *5 (holding that IDR awards are not subject to confirmation under FAA Section 9 because "[t]he NSA is not arbitration and there is no enforceable arbitration award"). And others simply denied petitions to vacate a single IDR payment determination where: (1) the petitioner did not assert any other claims; (2) the petitioner did not dispute that the IDR payment determination at issue involved a qualified IDR service; and thus (3) the court had no reason to consider the scope of the NSA's Judicial Review Provision or whether it applies to conduct like the NSA Scheme. *See Aetna*, 140 F.4th at 620 (denying vacatur because petitioner failed to adequately plead fraud); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, 8:24-cv-840, 2024 WL 4226799, at *3 (M.D. Fla. Sept. 18, 2024) (denying vacatur because undisputed record evidence rendered allegations implausible); *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 24-10135, 2025 WL 3222820, at

*1 (11th Cir. Nov. 19, 2025) (denying vacatur because IDRE's reasoning for payment determination is not subject to judicial review).

Per the NSA's plain language, Anthem may seek "judicial review" of an IDRE's payment 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 includes those in this case because the IDREs "exceeded their powers," 9 U.S.C. § 10(a)(4), by issuing payment determinations on disputes that were ineligible for IDR. The NSA only permits IDREs to issue a payment determination for a "qualified IDR item or service." 42 U.S.C. § 300gg-111(c)(5)(A). Anthem pleads that IDREs issued thousands of payment determinations for services that were not a "qualified IDR item or service." (AC, ECF No. 25 at PageID 159, 162, ¶¶ 110, 120.) As contemplated by the Judicial Review Provision, this is a "case described in" 9 U.S.C. § 10(a)(4) because the IDREs "act[ed] 'outside [their] authority' by resolving a dispute not committed to arbitration[.]" *Leviathan Grp. LLC v. Delco LLC*, 24-1547, 2025 WL 884085, at *2 (6th Cir. Mar. 21, 2025)

Anthem may also seek "judicial review" of IDR payment determinations 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). And while Anthem 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 typically did not issue written eligibility decisions at all, much less decisions addressing any claims of fraud.

B. Anthem's Claims Are Not a Collateral Attack on IDR Determinations.

Because the NSA does not incorporate the FAA's procedural provisions, Defendants' arguments about "collateral attacks" on IDR determinations are inapposite. In *Corey v. N.Y. Stock*

Exch., the Sixth Circuit reasoned that the bar on collateral attacks was necessary because "[t]he three month notice requirement in section 12 [of the FAA] for an appeal of the award . . . is meaningless if a party to the arbitration proceedings may bring an independent direct action asserting such claims outside of the statutory time period provided for in section 12." 691 F.2d 1205, 1212–13 (6th Cir. 1982); *see also Bachman Sunny Hill Fruit Farms, Inc. v. Producers Agric. Ins. Co.*, 57 F.4th 536, 541 (6th Cir. 2023) ("The holdings of *Decker* and *Corey* follow from the FAA's exclusive remedies."); *c.f. In re Robinson*, 326 F.3d 767, 771 (6th Cir. 2003) (disallowing collateral attack on contractual arbitration subject to all FAA procedural limitations). The principle has no bearing here given that "the NSA does not invoke or discuss §§ 6, 9, 12, or any other sections of the FAA." *Med-Trans*, 700 F. Supp. 3d at 1083.

Moreover, regardless of whether the FAA's procedures apply (they do not), Anthem seeks injunctive and other relief that cannot possibly be construed as a collateral attack on any prior IDR award. 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." *Tex. Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 489 (5th Cir. 2020). If the plaintiff's damages are simply the "award it believes it should have received," it is a collateral attack. *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 750 (5th Cir. 2008); *see also Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 910 (6th Cir. 2000) (plaintiff sought only to "rectify the alleged harm she suffered by receiving a smaller arbitration award than she would have received").

Anthem is not seeking damages that it sought and failed to procure in the underlying IDR proceedings. Instead, Anthem 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 VIII). First, Anthem seeks "[i]njunctive

relief prohibiting Defendants from continuing to submit false attestations and initiating IDR for items or services that are not qualified for IDR" to prevent future injury from the NSA Scheme. (AC, ECF No. 25 at PageID 202, ¶ 300.) Defendants cite no authority that could possibly preclude prospective relief, which is not available in IDR or through vacatur.[11]

Second, Anthem 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, and (2) IDR administrative fees paid to HHS, which are not refundable. *See supra* at 12-13. Anthem incurs these damages even in the IDR proceedings in which it prevails. Anthem could not recover either category of damages in IDR or through vacatur, and thus they cannot possibly be construed as providing Anthem with the "award it believes it should have received." *Gulf Petro Trading Co., Inc.*, 512 F.3d at 750.

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

Defendants defrauded Anthem by initiating thousands of IDR proceedings with knowingly false attestations of eligibility to obtain millions of dollars in payment determinations for patently ineligible disputes. Defendants claim that they were engaging in "core petitioning activity protected by the First Amendment," and their fraudulent NSA Scheme should therefore be immune to liability under the *Noerr-Pennington* doctrine. (*E.g.* HaloMD Br., ECF No. 43 at PageID 498.)[12]

The decision whether *Noerr* immunity should apply is "a question of fact that is inappropriate for a motion to dismiss." *Scooter Store, Inc. v. SpinLife.com, LLC*, 77 F. Supp. 2d

[11] *Texas Brine* did not deem a request for injunctive relief to be a collateral attack. In *Texas Brine*, the plaintiff's only "equitable" relief was "disgorge[ment]" of amounts paid during the arbitration." 955 F.3d at 489.

[12] Citing district court cases, Defendants claim "[c]ourts uniformly hold that *Noerr-Pennington* immunizes a party from RICO and other civil claims[.]" (HaloMD Br., ECF No. 43 at PageID 26; Provider Br., ECF No. 40 at PageID 25.) The Sixth Circuit has not adopted that expansion. *Campbell v. PMI Food Equip. Grp., Inc.*, noted in dicta that **other** courts had done so before dismissing the plaintiff's claims on other grounds. 509 F.3d 776, 790 (6th Cir. 2007).

1102, 1115 (S.D. Ohio 2011). And the Court should reject Defendants' argument for two additional reasons. First, IDR disputes "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 court proceedings, "[the] willful submission of false facts" does not enjoy *Noerr* immunity. *Potters Med. Ctr. v. City Hosp. Ass'n*, 800 F.2d 568, 580 (6th Cir. 1986).

1. *Noerr* Immunity Does Not Apply in a Private Commercial Dispute.

Noerr immunity does not apply to Defendants' false statements as part of a private payment dispute before private companies (IDREs). *Ford Motor Co.*, 972 F. Supp. 2d at 868-69. *Noerr* immunity is premised on the First Amendment's Petition Clause and protects "conduct (including litigation) aimed at influencing decision making by the government." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014). The Supreme Court created the doctrine to immunize legitimate efforts to lobby the government from 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). Defendants do not cite any authority applying *Noerr* to statements in a pure payment dispute between private entities.

The AC alleges that Defendants submit false attestations of eligibility in non-public IDR proceedings before private IDREs. (AC, ECF No. 25 at PageID 130-32, 151-56, ¶¶ 1-5, 80-95.) Such statements "before a private organization do not implicate the First Amendment." *Ford Motor Co.*, 972 F. Supp. 2d at 868-69. Defendants cite no authority to the contrary. Instead, every decision they cite applied the doctrine to claims arising from "the right to petition . . . the Government" and involved harm to the plaintiff resulting directly from action by government officials. *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (emphasis added); *e.g.*, *Cox v. Ruckel*, 23-cv-5698, 2025 WL 2603787, at *6 (6th Cir. Sept. 9, 2025) ("[A]ttending the fiscal court meeting and publishing the op-ed—can be understood as either protected speech or petitioning the

government for official action."); *Geomatrix*, *LLC v. NSF Int'l*, 82 F.4th 466, 482 (6th Cir. 2023) (*Noerr* applied because harm resulted from "independent decisions of state regulators"); *Geomatrix, LLC v. NSF Int'l*, 629 F. Supp. 3d 691, 705-06, 711-12 (E.D. Mich. 2022) (same); *VIBO Corp. v. Conway*, 669 F.3d 675, 683-84 (6th Cir. 2012) (same); *Knology, Inc. v. Insight Commc'ns Co*., 393 F.3d 656, 659 (6th Cir. 2004) (same). *Noerr* immunity "rests on two grounds: the First Amendment's protection of the right to petition the government, and the recognition that a representative democracy . . . depends upon the ability of people to make known their views and wishes to the government." *Potters Med. Ctr. v. City Hosp. Ass'n*, 800 F.2d 568, 578 (6th Cir. 1986). Neither ground implicates private payment disputes before non-governmental IDREs.

Defendants misconstrue their cited authorities in an effort to expand *Noerr* beyond its recognized scope. HaloMD cites *Trucking Unlimited* for the proposition that *Noerr* "shields any effort to elicit action from government decision-makers, including . . . arbitrative bodies acting pursuant to federal laws." (HaloMD Br., ECF No. 43 at PageID 520). But *Trucking Unlimited* does not mention "arbitrative bodies" at all. Instead, that case involved allegations that defendants abused "state and federal proceedings." 404 U.S. 408, 509 (1972). Far from expanding the doctrine to actions before non-governmental bodies, the Court clarified that *Noerr* immunity applies to petitioning of "state and federal agencies and courts." *Id.* at 510-11.

HaloMD makes a similarly inapt comparison to *Gable v. Lewis*, claiming that it confirms initiation of IDR disputes "is quintessential petitioning." (HaloMD Br., ECF No. 43 at PageID 521.) But *Gable* recognized only that *Trucking Unlimited* had extended the doctrine to petitioning before "nonlegislative and nonjudicial public agencies." 201 F.3d at 771. The court said nothing about proceedings before private dispute resolution entities. And while Defendants make false statements to HHS to access the IDR process, *Noerr* does not apply if "the government acts in a []

ministerial or non-discretionary capacity in direct reliance on the representations made by private parties." *In re Buspirone Pat. Litig.*, 185 F. Supp. 2d 363, 369 (S.D.N.Y. 2002).

Provider Defendants' only argument for application of *Noerr* to IDR proceedings is that the IDR process is "government-established" and, according to them, "has the character of an agency adjudication." (Provider Br., ECF No. 38-1 at PageID 288.) But *Noerr* immunity applies only where the harm at issue "is the result of valid governmental action, as opposed to private action." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 495 (1998). The fact that the government delegated authority to private companies to referee a highly limited and expedited dispute resolution process between private parties does not make IDREs public officials or render IDR disputes a form of government petitioning protected by the First Amendment. Defendants' submission of disputes to IDREs therefore does not constitute First Amendment-protected petitioning of public agencies aimed at securing "governmental authority."

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

Noerr does not apply to Defendants' NSA Scheme for a second reason: Defendants' NSA Scheme is premised on making intentional misrepresentations of fact, and such misrepresentations cannot be subject to *Noerr* immunity as a matter of law. *See Trucking Unlimited*, 404 U.S. at 513 ("Misrepresentations . . . are not immunized when used in the adjudicatory process."); *Potters Med. Ctr.*, 800 F.2d at 580 ("the willful submission of false facts" does not enjoy *Noerr* immunity).

The Sixth Circuit has already rejected *Noerr* immunity "for false statements in a . . . complaint, recognizing that the Petition Clause does not protect sham petitions, baseless litigation, or petitions containing intentional and reckless falsehoods." *Wise v. Zwicker & Assocs., P.C.*, 780 F.3d 710, 719, n.5 (6th Cir. 2015) (internal citation and punctuation omitted); *see Westmac*, 797 F.2d at 317-18 (there is no *Noerr* immunity for illegal "reprehensible practices such as perjury, fraud . . . or misrepresentation"); *U.S. Futures Exch., L.L.C. v. Bd. of Trade of the City of Chic.,*

Inc., 953 F.3d 955, 960 (7th Cir. 2020) ("Fraudulent misrepresentations made in an adjudicative proceeding before an administrative agency are not protected[.]").

The principle precluding *Noerr* immunity for misrepresentations is entirely distinct from the "sham litigation" exception, which applies to "a defendant whose activities are not genuinely aimed at procuring favorable government action at all." *See Knology*, 393 F.3d at 658-59. This fraud exception applies to "one who genuinely seeks to achieve his governmental result, but does so through improper means," including misrepresentations. *Id.*; *see also Hartman*, 596 F.3d 606, 616 (6th Cir. 2009) (identifying "sham petitions, baseless litigation, or petitions containing intentional and reckless falsehoods" as three categories of conduct exempt from *Noerr*); *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005) (distinguishing "intentional misrepresentations to the court" from other types of shams). While "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). For this reason, Defendants' citations to *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49 (1993), and other cases rejecting application of the sham litigation exception based on "successful petitioning" are inapposite. (HaloMD Br., ECF No. 43 at PageID 522; Provider Br., ECF No. 38-1 at PageID 277.)

Nor does *EQMD, Inc. v. Farm Bureau General Ins. Co. of Michigan* help Defendants. The *EQMD* court separately examined both the sham litigation exception and the fraud exception. 19-cv-13698, 2021 WL 843145, at *5-8 (E.D. Mich. March 5, 2021). The court rejected the fraud exception for two reasons that have no bearing here. First, unlike Anthem, the plaintiff in that case failed to cite any case law recognizing the fraud exception. *Id.* at *7. Second, the court found that the plaintiff had not plausibly alleged misrepresentations that "infect[ed] the core of the case." *Id.*

at *7 (quotation omitted). In contrast, Defendants' fraudulent attestations of IDR eligibility infect the core of their IDR disputes. Without those false attestations, the ineligible disputes would not reach the IDREs, and Anthem would not incur administrative and IDRE fees, unjust payment determinations, the cost of defending ineligible disputes, and other harms resulting from Defendants' NSA Scheme. *Cf. Baltimore Scrap*, 237 F.3d at 402 (fraud does not "infect the core" of a case where, without the fraud, the outcome of the case would have been the same). *Noerr* provides no basis for immunity over Defendants' knowingly false attestations of eligibility.

D. Collateral Estoppel Does Not Apply to Anthem's Claims.

HaloMD cannot invoke collateral estoppel, a doctrine that is incompatible with IDR procedures and Anthem's well-pleaded factual allegations. No IDRE has (or can) evaluate Anthem's allegations regarding Defendants' scheme to submit thousands of knowingly ineligible IDR disputes against Anthem. Nor did Congress (or even the Departments) dictate meaningful procedures in any law or regulation addressing eligibility for any individual IDR proceeding.

In the NSA, Congress did not address, much less delegate, eligibility decision making to IDREs. *See* 42 U.S.C. § 300gg-111. And the regulations simply state that for each individual IDR proceeding, an IDRE "must review the information submitted in the notice of IDR initiation to determine whether the Federal IDR process applies," which only includes information provided by the initiating party (*i.e.*, Defendants). (AC, ECF No. 25 at PageID 149, ¶ 68); 45 C.F.R. § 149.510(c)(1)(v). The eligibility decision-making process is "a cursory review by the IDRE based on incomplete, one-sided information." (AC, ECF No. 25 at PageID 149, ¶ 68.) Nothing in the regulations requires an IDRE to conduct hearings, consider a health plan's factual objections, or issue decisions (written or otherwise) describing their rationale. *See id.* IDREs also have a vested financial interest in finding a dispute eligible because "they only receive compensation if a dispute reaches a payment determination." (AC, ECF No. 25 at PageID 159, ¶ 108); *supra* at 6.

The Court should disregard HaloMD's reliance on nonbinding guidance to dispute the well-pleaded facts in the AC and the plain language of the NSA and its implementing regulations. (*See* Regulations, ECF Nos. 43-1 through 43-7.) The Court may only take judicial notice of a document "for the fact of the documents' existence, and not for the truth of the matters asserted therein." *Passa v. City of Columbus*, 123 F. App'x 694, 697 (6th Cir. 2005). HaloMD cites to nonbinding guidance documents to argue that IDREs "must review the information submitted in . . . the notification from the non-initiating party claiming the Federal IDR Process is inapplicable . . . to determine whether the Federal IDR process applies." (HaloMD Br., ECF No. 43 at PageID 515 (quoting ECF 43-4)). But that is not evidence of a full and fair process. In fact, following the nonbinding guidance, the Departments admonished IDREs to "reduce errors" and institute "robust quality assurance (QA) programs to verify dispute eligibility[.]" (ECF No. 45-7 at PageID 851.) HaloMD cannot rely on nonbinding guidance to contradict the plain language of the NSA[13] and controlling regulations, which do not require a meaningful eligibility evaluation process.

"Collateral estoppel is an affirmative defense, so [Defendants] bear[] the burden of proving each of its elements." *See McNamara v. Ohio Bldg. Auth.*, 697 F. Supp. 2d 820, 830 (N.D. Ohio 2010). When raised on a motion to dismiss, the party asserting estoppel must provide evidence demonstrating what was determined in the prior proceeding. *See*, *e.g.*, *Garner v. Dep't of Def.*, 2:18-cv-1545, 2020 WL 209310, at *5 (S.D. Ohio Jan. 14, 2020) ("While Plaintiff asserts that a court has ruled on some of the issues presently before this Court, Plaintiff has failed to submit an opinion from such court. As such, this Court is unable to discern what the previous court has already decided and Plaintiff has failed to meet her burden."). Here, Defendants do not and cannot submit evidence of any underlying eligibility "decision" to support their assertion of collateral

[13] Even if the NSA were ambiguous (it is not), courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2025).

estoppel for the IDR proceedings at issue in this case. Thus, their argument fails at the outset.

Defendants also cannot establish the elements of collateral estoppel. The doctrine requires Defendants to show that: "(1) the question in this case is the same as the one raised in the earlier litigation; (2) the answer given in the earlier litigation was necessary to the decision; (3) that decision was a final judgment on the merits; and (4) the affected party had a 'full and fair opportunity' to litigate the issue in the prior litigation." *Olivares v. Performance Contracting Grp.*, 19-cv-2357, 2020 WL 6829552, at *3 (6th Cir. July 14, 2020).

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

IDREs' eligibility "decisions" are limited in scope. Regulations only require IDREs to "review the notice of IDR initiation" with the provider's attestation of eligibility "to determine whether the Federal IDR process applies." (AC, ECF No. 25 at PageID 149, ¶ 68); 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 scheme to defraud Anthem in violation of RICO, ERISA, and Ohio statutes and torts. These 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").

2. Defendants' Fraud Was Neither Litigated Nor Necessary.

Because IDREs have no obligation to verify Defendants' false attestations or consider the nature and substance of Anthem's objections, those issues were "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). And no IDRE has the authority to

review Defendants' fraudulent NSA Scheme involving thousands of ineligible disputes. *See id.*

3. Anthem Did Not Have a Full and Fair Opportunity.

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); *In re Leonard*, 644 F. App'x 612, 618 (6th Cir. 2016) ("[A] full and fair opportunity to litigate entails . . . the procedural requirements of due process.") (internal citation omitted); *Ivery v. United States*, 686 F.2d 410, 413 (6th Cir. 1982) (estoppel cannot apply if the "procedures followed suggest that the arbitration process was unfair and the decision unreliable"); *see Bravo-Fernandez v. United States*, 580 U.S. 5, 10 (2016) (preclusion requires "confidence that the result achieved in the initial litigation was substantially correct.").

First, to establish the requisite fairness in a prior proceeding, a party must have "the opportunity to present evidence and arguments" before an "impartial" fact finder. *Nash v. Bryce*, 157 F.4th 436, 445 (6th Cir. 2025). Under the NSA, however, IDREs only receive payment if they agree that a dispute is eligible. (AC, ECF No. 25 at PageID 149, 157, ¶¶ 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, 1243-44 (11th Cir. 2020) (because defendant received a "$40 monthly fee only as long as a probationer remained on probation . . . it couldn't determine probation sentencing matters impartially"); *Caliste v. Cantrell*, 937 F.3d 525, 530 (5th Cir. 2019) ("[I]ncentives that most obviously violate the right to an impartial magistrate are those that . . . put money directly into a judge's pocket"); *McNeil v. Cmty. Prob. Servs., LLC*, 1:18-cv-00033, 2021 WL 366776, at *18 (M.D. Tenn. Feb. 3, 2021) (collecting cases).

HaloMD submitted 134,318 disputes in the second half of 2024. (AC, ECF No. 25 at PageID 157, ¶ 101.) The IDREs deciding those disputes stood to earn tens of millions of dollars if, and only if, they decided eligibility in HaloMD's favor. (*Id.* at PageID 150, 159, ¶¶ 74, 108); 42

U.S.C. § 300gg-111(c)(5)(F); *supra* at 6. Judges are typically compensated with a salary, and arbitrators are paid for all their work on a case up through the point of dismissal. But per the NSA, an IDRE who dismisses a dispute as ineligible forfeits the right to any compensation at all. *Id*. Because IDREs have an immediate financial stake in the outcome of their eligibility "decisions," they are not impartial fact finders to whom collateral estoppel applies.

Partiality aside, collateral estoppel also does not apply to non-judicial proceedings where, as here, "the procedures available in the first court [were] tailored to the prompt, inexpensive determination of small claims and thus may be wholly inappropriate to the determination of the same issues when presented in the context of a much larger claim." *Staub v. Nietzel*, 22-5384, 2023 WL 3059081, at *6 (6th Cir. Apr. 24, 2023) (quoting Restatement (Second) of Judgments § 28 (Am. L. Inst. 1982); *United States v. Guy*, 257 F. App'x 965, 967 (6th Cir. 2007) (collateral estoppel may not apply "where the second action 'affords [one party] procedural opportunities unavailable in the first action that could readily cause a different result") (quotation omitted).

Defendants generalize that collateral estoppel applies to arbitration and administrative proceedings, but their cited authorities confirm that courts must carefully consider the adequacy of procedures in prior proceedings. *See B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 158 (2015) (courts must ask "whether the procedures used in the first proceeding were fundamentally poor, cursory, or unfair"); *Amerisure Mut. Ins. Co. v. Swiss Reinsurance Am. Corp.*, 24-cv-1492, 2025 WL 3094132, at *5 (6th Cir. Nov. 4, 2025) (arbitration was "substantially similar in form and scope to" a judicial proceeding and plaintiff failed to show "that the arbitration process to any extent was unfair or the decision unreliable"); *W.J. O'Neil Co. v. Shepley, Bulfinch, Richardson & Abbott, Inc.*, 700 F. App'x 484, 492–93 (6th Cir. 2017) (arbitration included testimony from multiple experts, "[v]oluminous testimonial and documentary evidence" and

"[d]irect and cross-examination of witnesses"); *Fyda Freightliner Cincinnati, Inc. v. Daimler Vans USA LLC*, 2:21-cv-5077, 2022 WL 2073394, at *4 (S.D. Ohio June 9, 2022) (administrative proceedings were "judicial in nature" and included submission of evidence and briefing).

Here, Congress deliberately created IDR as an informal process to efficiently resolve relatively low-value payment disputes without the need for legal counsel. *See supra* at 4-7. IDR has 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. *Id.* There are no opportunities for testing evidence or cross examination, no briefing, and no hearings of any kind. *See id.* IDR is precisely the kind of "prompt, inexpensive determination of small claims" for which collateral estoppel is "wholly inappropriate." *See Staub,* 2023 WL 3059081, at *6.

In any event, "[e]stoppel doctrines are equitable in nature and therefore are invoked by a court at its discretion." *United States v. Williams*, 612 F.3d 500, 510 (6th Cir. 2010) (internal citation omitted); *PenneCom B.V. v. Merrill Lynch & Co., Inc.*, 372 F.3d 488, 493 (2d Cir. 2004) (invocation of collateral estoppel "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, a court should not apply collateral estoppel without the benefit of discovery. *See PenneCom*, 372 F.3d at 493.

E. In the Alternative, Anthem Pleads a Claim for Vacatur (Count VIII).

In the alternative to its common law and statutory claims, Anthem has also asserted a claim for vacatur. (AC, ECF No. 25 at PageID 200-01, ¶¶ 286-90 (Count VIII)). Defendants argue that Anthem's grounds for vacatur do not satisfy the substantive requirements of 9 U.S.C. § 10(a). (Halo Br., ECF No. 43 at PageID 536; Provider Br., ECF No. 38-1 at PageID 293.) For the reasons stated in Section II.A.2, those arguments fail.

In addition, Defendants suggest that Anthem "cannot plead a claim for vacatur across an indeterminate universe of IDR awards and otherwise satisfy Fed. R. Civ. P. 8 and 9(b)." (Halo Br., ECF No. 43 at PageID 536; Provider Br., ECF No. 38-1 at PageID 294) ("Anthem cannot plead vacatur en masse."). But Defendants cite no authority for this proposition.[14] Defendants' argument might have merit in a vacatur action governed by the procedures of the FAA, 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. There is no basis to impose FAA procedural requirements on a claim for vacatur under the NSA.

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

Defendants and the LaRoque Family Enterprise have engaged in extensive RICO violations, employing interstate wires to submit thousands of fraudulent IDR submissions to Anthem, the Departments, and IDREs. (AC, ECF No. 25 at PageID 131-33, ¶¶ 3-12.) Defendants' motions categorically ignore the AC's allegations and misconstrue applicable law. But as detailed below: (1) the litigation activities exemption does not apply; and (2) Anthem 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 another attempt to immunize their fraud, Defendants invoke the so-called 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 Sixth Circuit has not applied the litigation activities doctrine. And this Court has at least two independent reasons not to apply it to Defendants' NSA Scheme. First, the policy reasons behind the doctrine do not remotely apply to IDR. Second, Defendants' "litigation

[14] Anthem need not "particularly allege the error infecting *each* challenged award under Rule 9(b)." (Provider Br., ECF No. 38-1 at PageID 294.) Defendants cite *Marlar*, 525 F.3d at 444, which does not address arbitral awards at all.

activities" here are independently intended to deceive the Departments (not simply IDREs), and their NSA Scheme targets insurers other than Anthem.

1. RICO Does Not Exempt Fraud in IDR Proceedings.

As part of the NSA Scheme, Defendants used false attestations of eligibility to initiate thousands of ineligible IDR proceedings against Anthem. (AC, ECF No. 25 at PageID 150-51, ¶¶ 72-78.) No court has exempted IDR from RICO liability, and this Court should decline Defendants' invitation to do so. Indeed, the policy reasons warranting trust of the litigation process are notably absent from the IDR process—which is why Defendants have been able to carry out their NSA Scheme at scale.

The policy rationale for the litigation activities doctrine is rooted in the courts' 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.* ("We trust the courts, and their time-tested procedures, to produce reliable results, separating validity from invalidity, honesty from dishonesty.").

But unlike court litigation, IDR proceedings do not utilize "time-tested procedures[] to produce reliable results, separating validity from invalidity, honesty from dishonesty." *Cf. Pendergraft*, 297 F.3d at 1206. In IDR, attestations of eligibility are not filed by attorneys who are bound by ethical obligations and subject to court and professional sanctions. *Cf. id.* at 1206. IDR does not provide any opportunity for discovery or cross examination. *Compare supra* at 4-7 *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. *Supra* at 6; *see Harper*, 976 F.3d at 1241. IDR also cannot serve as the basis for a malicious

prosecution claim. *Compare with Pendergraft*, 297 F.3d at 1207-08 (civil litigants may police 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").

Moreover, principles of res judicata and collateral estoppel do not apply to IDR proceedings. *Compare supra* at 33-38 *with Kim*, 884 F.3d at 104 (RICO claims based on litigation activities "erode the principles . . . of res judicata and collateral estoppel"). IDR proceedings are not open to the public, and a disproportionately small number of providers initiate the overwhelming majority of IDR disputes. (AC, ECF No. 25 at PageID 157, ¶¶ 99-100) (ten companies initiated 71% of all disputes). Permitting claims based on fraudulent IDR submissions has no potential to chill "open access to the courts" or "inundate the federal courts" with RICO cases. *Cf. Kim*, 884 F.3d at 104.

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." (ECF No. 45-7, at PageID 851.) While judges and the courts "produce reliable results, separating validity from invalidity, honesty from dishonesty," those overseeing the IDR process do not believe the same is true of IDREs. *Compare id. with Pendergraft*, 297 F.3d at 1206.

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

The RICO litigation activities exemption does not apply here for a separate, independent reason. Courts have rejected application of the exemption to schemes that either: (1) seek to deceive a third party, and not simply the court itself; or (2) target victims who were not party to the underlying proceeding. *See United States v. Lee,* 427 F.3d 881, 890 (11th Cir. 2005); *Carroll v. United States Equities Corp*., 18-cv-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020). Here, Defendants' NSA Scheme (i) seeks to deceive the Departments, and not simply the IDREs;

and (ii) targets numerous other insurers in addition to Anthem.

As articulated by the Eleventh Circuit, the fact that a document is prepared for or used in litigation is not, by itself, sufficient to invoke the litigation activities exemption. *Lee*, 427 F.3d at 890. Rather, litigation activities may form the basis for wire fraud where the defendant intends for litigation materials to deceive someone other than the court itself. *Id.* In *Lee*, the defendants were convicted of mail fraud based on having served a "motion to dismiss" containing false affidavits on opposing counsel in a foreclosure action. The defendants appealed their conviction on this count, invoking the exemption for litigation activities. In affirming the conviction, the Eleventh Circuit rejected a categorical bar against premising wire fraud on litigation activities. The court held that the exemption would apply only if the relevant scheme was intended solely to deceive the court. *Id*. 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 though the IDR process does not qualify as a "litigation" activity, the reasoning of *Lee* is instructive. Before Defendants can deceive IDREs, they must first deceive the Departments. Before an IDRE is selected, Defendants must 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"); (*see also* AC, ECF No. 25 at PageID 131-32, 141-42, 146, 148, 151, 153, ¶¶ 3-4, 8, 43, 56, 64, 76, 79, 86.) For this additional reason, the litigation activities exemption does not apply.

The exemption also does not apply because the NSA Scheme involves thousands of different proceedings and targets Anthem in addition to other health plans. Courts have limited application of the exemption 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. The decision in

Kim is a leading authority on this doctrine. And "*Kim* leaves open the door for RICO claims premised on abusive litigation activities involving conduct beyond a single lawsuit." *Carroll*, 2020 WL 11563716, at *9 (allowing RICO claim based on false filings in thousands of cases);[15] *cf. Dees v. Zurlo*, 1:24-cv-1, 2024 WL 2291701, at *2, 5 (N.D.N.Y. May 21, 2024) (*Kim* did "not automatically preclude" a RICO claim that sought "to overturn state-court custody and support decisions" "related to the custody and supervision of [plaintiff's] children" but concluding that the "reasons" and "principle[s]" behind the doctrine supported its application under those facts).

Finally, Provider Defendants resort to comparing (1) their systematic submission of thousands of knowingly false eligibility attestations to (2) Anthem making minor, inadvertent factual mistakes in its original complaint that did not impact the viability of its claims and were subsequently corrected in the AC. (Provider Br., ECF No. 38-1 at PageID 292; *see* HaloMD Br., ECF No. 43 at PageID 527.)[16] This false equivalence demonstrates the difference between court proceedings, in which counsel function as officers of the court and correct even minor factual errors, and IDR proceedings, in which Defendants systematically make misrepresentations to initiate the IDR process for ineligible disputes and the victim of Defendant's scheme has no recourse other than to seek court intervention.

B. Anthem Pleads Predicate Acts of Wire Fraud.

Anthem has supported its wire fraud claim by identifying the precise misrepresentations that Defendants must make to initiate an ineligible dispute on the IDR Portal, (AC, ECF No. 25 at

[15] *C.f. Pompy v. Moore,* No. 19-10334, 2024 WL 845859, at *16 (E.D. Mich. Feb. 28, 2024) (dismissing RICO claims on multiple grounds and noting in *dicta* that litigation materials exception likely applied to court ordered transmission of search warrants in single criminal proceeding).

[16] For example, two of the dispute examples that Anthem corrected are patently ineligible for the IDR process because they involved fully insured health plans subject to Ohio's Surprise Billing Law, a fact Anthem communicated to Defendants several times before and after they fraudulently attested to eligibility to initiate IDR. (AC, ECF No. 25 at PageID 49-50, 54-55, ¶¶ 180-85, 199-205.) Defendants' Rule 11 communication also quibbled over a typo in the date of IDR initiation for another dispute. (*See id.* at PageID 45 ¶ 165.)

PageID 143-47, ¶¶ 48-60), and by setting forth the specific time, date, source, and content of demonstrative misrepresentations constituting wire fraud, (*e.g.*, AC, ECF No. 25 at PageID 174, 176, 178, ¶¶ 165, 171, 178.) Anthem has also set forth clear allegations tying Defendants' conduct to its injuries, including millions of dollars in IDR fees and payment determinations and operational expenses to combat Defendants' fraud. Defendants do not and cannot meaningfully dispute that the AC pleads the elements of wire fraud, including causation.

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

Controlling law forecloses Defendants' 9(b) arguments. Defendants argue that Anthem's wire fraud claims allege thousands of misrepresentations but do not identify who made each false representation or how each representation is false. (Provider Br., ECF No. 38-1 at PageID 281–283, 291; *see* HaloMD Br., ECF No. 43 at PageID 528-29.) But "[w]here a complaint alleges a complex and far-reaching fraudulent scheme," a plaintiff need not plead each instance of fraud; rather, Rule 9(b) is satisfied so long as the scheme is "pleaded with particularity and the complaint [] also 'provide[s] examples of specific' fraudulent conduct that are representative samples of the scheme." *Marlar*, 525 F.3d at 444–45 (citation omitted); *United States ex rel. Bledsoe v. Cmty*, 501 F.3d 493, 509–10 (6th Cir. 2007) ("*Bledsoe II*") (if plaintiffs plead "examples of specific [misrepresentations made] pursuant to th[e] scheme, [they] may proceed to discovery on the entire fraudulent scheme"); *United States ex rel. USN4U, LLC v. Wolf Creek Fed. Servs., Inc.*, 34 F.4th 507, 514 (6th Cir. 2022) ("[S]uch examples are sufficiently particular to meet the requirements of Rule 9(b)."); *Kovach v. Access Midstream Partners, L.P.*, 5:15-cv-616, 2016 WL 1162061, at *11 (N.D. Ohio Mar. 23, 2016) (denying dismissal of RICO claim where plaintiff pled "examples of specific fraudulent conduct as a representative sample").

Anthem pleads the precise set of representations that Defendants must make each time they initiate a dispute on the IDR Portal. (*See* AC, ECF No. 25 at PageID 143-47, ¶¶ 48-61.) Anthem

also provides examples setting forth the specific time, date, source, and content of specific misrepresentations constituting wire fraud.[17] (*See, e.g.*, AC, ECF No. 25 at PageID 174, ¶ 165) ("On or about March 11, 2025, HaloMD, . . . on behalf and in coordination with OCM, . . . submitt[ed] an IDR notice . . . [that] falsely attested that the IONM services rendered by OCM on July 10, 2024, . . . were eligible for IDR."); (*id.* at PageID at 176, ¶ 171) ("On November 15, 2024, HaloMD, again acting for and in coordination with OCM . . . falsely attested that the services were a qualified item or service within the scope of the federal IDR process."). Rule 9(b) requires nothing more. *See Kovach*, 2016 WL 1162061, at *11 (examples sufficient to "apprise defendants as to the time, place, and content of the alleged misrepresentations").

Defendants also contend that their attestations of IDR eligibility are incapable of supporting a fraud claim because they state only that "an initiating party, 'to the best of [its] knowledge,' believes a dispute is eligible." (HaloMD Br., ECF No. 43 at PageID 513, 528-29.) This argument fails for two reasons.

First, the AC alleges that Defendants make purely factual misrepresentations in their submissions, "such as the type of health plan at issue [and] negotiation dates[.]" (AC, ECF No. 25 at PageID 131 ¶ 4.) Second, the AC alleges that Defendants "knowingly submit false and fraudulent attestations of eligibility for services and disputes that they know are ineligible for the IDR process." (*E.g.*, AC, ECF No. 25 at PageID 131-33, 151-52, 156, ¶¶ 3-5, 9, 10, 80, 93.) A knowledge qualifier does not immunize Defendants' knowingly false attestations. [18]

[17] These allegations easily satisfy the standard in *Penn, LLC v. Prosper Bus. Dev. Corp.*, by making "specific allegations as to which defendant caused what to be [submitted], and when and how each [submission] furthered the fraudulent scheme." *See* 2:10–cv–9932011, WL 2118072, at *11 (S.D. Ohio May 27, 2011).

[18] Defendants claim these were good faith errors, but "[s]uch numerous errors spanning multiple [] years support a showing of intent to defraud in the context of the overarching scheme rather than inadvertence." *United States v. Robinson*, 99 F.4th 344, 357–58 (6th Cir. 2024). At best, Defendants' claim is a fact issue to be resolved after discovery.

Nor is there any merit to Provider Defendants' argument that Anthem has failed to plead their roles in the scheme to defraud at the heart of the AC (Provider Br., ECF No. 38-1 at PageID 269-70.) The Sixth Circuit has categorically rejected the argument that "each defendant must have made a material misrepresentation" to support a claim for wire fraud, finding instead "the evidence need only show that each defendant participated in a scheme to defraud that involved a misrepresentation of material fact." *United States v. Birnie*, 193 F. App'x 528, 536 (6th Cir. 2006).

This is not a heavy burden. For example, in *United States v. Crossley*, an insider at an insurance company submitted fabricated claims on behalf of co-conspirators, who would then cash insurance checks and share them with the insider. 224 F.3d 847, 856 (6th Cir. 2000). After all members of the conspiracy were convicted of wire fraud, one of the co-conspirators appealed on the grounds that his sole conduct involved (1) giving the insider their names and mailing addresses and (2) receiving and cashing the checks. *Id*. The Sixth Circuit affirmed their conviction, holding that a wire fraud plaintiff is "not required to prove that each member of a conspiracy knew every detail" of the scheme, and that it was sufficient to show that the defendant "knew the check was for an insurance claim to which she was not entitled." *Id.*

The allegations of the AC far exceed those deemed sufficient in *Crossley*. The AC alleges that Provider Defendants have a formal business relationship with HaloMD in which they directly authorize HaloMD to submit fraudulent disputes on their behalf. (*E.g.*, AC, ECF No. 25 at PageID 167-71, ¶¶ 140-56). Unlike the unsophisticated defendants in *Crossley*, who simply provided names and deposited checks, Provider Defendants are sophisticated businesses that directly engage in open negotiation with Anthem before utilizing HaloMD to submit millions of dollars of ineligible disputes to IDR. Provider Defendants are the source of all information and materials submitted for these disputes and authorize their submission after being expressly advised by

Anthem that they are ineligible for IDR. (*E.g.*, *id.* at PageID 172-84 ¶¶ 159-205.) And each Provider Defendant then receives millions of dollars in payments based on disputes that it knows are ineligible. (*Id.* at PageID 131, 133, ¶¶ 2, 10-11.).

Provider Defendants' own cited authorities confirm that Anthem has satisfied Rule 9(b) as to each Provider Defendant. These cases confirm that "[a] plaintiff is not necessarily barred from using group pleading to support a common law fraud claim, so long as Rule 9(b) is ultimately satisfied." *In re Nat'l Century Fin. Enters., Inc.*, 504 F. Supp. 2d 287, 314 (S.D. Ohio 2007). Rather, in the context of a multi-act scheme, a plaintiff may simply "identify[] a representative [misrepresentation] submitted or caused to be submitted by [each] defendant in question." *United States v. Doyle*, 18-cv-373, 2022 WL 1186182, at *7 (S.D. Ohio Apr. 21, 2022); *compare United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 643 (6th Cir. 2003) ("*Bledsoe I*") ("[E]ach defendant named in the complaint is entitled to be apprised of the circumstances surrounding the fraudulent conduct with which he individually stands charged.") *with In re Pac One, Inc.*, 1-cv-85027, 2007 WL 2083817, at *8 (N.D. Ga. July 17, 2007) (plaintiff made "no attempt to specify [each defendant's] individualized involvement").

Here, Anthem satisfies this requirement by providing representative fraudulent disputes "submitted or caused to be submitted by [each] defendant in question." *Doyle*, 2022 WL 1186182, at *7. (*See, e.g.*, AC, ECF No. 25 at PageID 172-76, ¶¶ 159-73 (OCM and MPOWERHealth); *id*. at PageID 176-78, ¶¶ 174-79 (Evokes and MPOWERHealth); *id*. at PageID 178-79, ¶¶ 180-85 (Midwest Neurology and MPOWERHealth); *id*. at PageID 179-84, ¶¶ 186-205 (Value Monitoring and MPOWERHealth)).

2. Anthem Pleads Causation.

The AC plainly alleges that Defendants' NSA Scheme proximately caused Anthem's injuries. *See Jackson v. Segwick Claims Management Services, Inc.*, 699 F. 3d 466, 482-83 (6th

Cir. 2012); *see also supra* 14-16. Defendants seek to blame others for Anthem's injuries, arguing they cannot be liable because IDREs failed to detect their fraud or Anthem failed to adequately object. Defendants' argument contradicts both the law and the well-pleaded facts in Anthem's AC. (HaloMD Br., ECF No. 43 at PageID 525-527; Provider Br., ECF No. 38-1 at PageID 272-74.)

Anthem easily satisfies the proximate cause directness requirement. *See Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992); (*C.f.* HaloMD Br., ECF No. 43 at PageID 516, Provider Br., ECF No. 38-1 at PageID 282.) "The directness requirement rests on three premises: the difficulty of 'ascertain[ing] the amount of plaintiff's damages attributable to the violation, as distinct from other, independent, factors'; the risk of duplicative recoveries; and the availability of a more suitable plaintiff." *Gen. Motors, LLC v. FCA US, LLC*, 44 F.4th 548, 559 (6th Cir. 2022) (citing *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 458-60 (2006)). Anthem's claims do not implicate any of these factors.

First, it is easy to ascertain that the NSA Scheme caused Anthem's injuries, which are far from being "unconnected to the alleged RICO violation," *Grow Mich., LLC*, 50 F.4th at 594 (internal quotation marks omitted). The fact that the IDREs are a necessary part of the scheme does not negate proximate causation. An intervening actor can take part in the chain of causation without being an "independent factor" that breaks the chain. *See Bridge*, 553 U.S. 639, 656-59 (2008) (defendant's false statements to a third party could be proximate cause of plaintiff's injury); *see also Gen. Motors*, 44 F.4th at 561 ("Using an intermediary in a RICO scheme does not alone preclude reliability."); *NOCO*, 35 F.4th at 483 ("Sometimes these intervening acts unite with the original act to cause injury.") (internal punctuation omitted).

Second, there is no risk of duplicative recoveries and no more suitable plaintiff. Defendants' fraudulent submissions in disputes with Anthem are intended to harm Anthem. "This

is not a case wherein the plaintiff sits parallel to the action, as in *Anza*; or attempts to recover in a linear fashion through and contingent upon the victims, as in *Holmes*." *Empire Title Servs., Inc. v. Fifth Third Mortg. Co.*, 1:10-cv-2208, 2013 WL 1337629, at *10 (N.D. Ohio March 29, 2013).[19]

Third, the Sixth Circuit's decision in *NOCO* is inapposite because (1) it analyzed proximate causation under Ohio state law rather than the RICO standard, and (2) it was issued on summary judgment. 35 F.4th at 482. In any event, *NOCO* laid out three ways in which an intervening factor could eliminate proximate causation, none of which apply.

Causation is absent if a third party independently causes the plaintiff's harm in an unforeseeable manner. *NOCO,* 35 F.3d. at 483. Here, reliance by IDREs and the Departments was not only foreseeable but intended. (*E.g.*, AC, ECF No. 25 at PageID 153 ¶ 84.) Causation may also be broken "[w]hen a third party that could have prevented the harm acts to cause the harm instead[.]" *NOCO,* 35 F.3d at 485. In *NOCO*, the court found that factor relevant because Amazon conducted a wholly independent investigation and the defendant "had no role in the investigation or the ultimate decision." *Id.* Here, Defendants are directly responsible for initiating disputes and provide the false attestations of eligibility relied on by the IDREs. And causation can be "broken by the plaintiff's own negligence." *Id.* at 486. To invoke this principle, Provider Defendants claim Anthem "knowingly withheld . . . eligibility objections from the IDREs." (Provider Br., ECF No. 38-1 at PageID 272.) But the AC explicitly pleads that Anthem continued to submit objections after Defendants initiated disputes. (*E.g.*, AC, ECF No. 25 at PageID 159, 178-79, 181, ¶¶ 107,

[19] *See generally e.g.*, *Anza*, 547 U.S. 451 (defendant company's tax evasion primarily injured the state and not plaintiff who claimed it gave defendant an unfair competitive advantage); *Holmes*, 503 U.S. 258 (government insurer claimed damages from having to reimburse investors for losses from defendant's stock manipulation scheme); *Gen. Motors*, 44 F.4th 548 (defendant car manufacturer's bribes to union boss primarily hurt the union's members and not plaintiff manufacturer who claimed competitive advantage).

110, 178, 183, 191.) Indeed, HaloMD expressly acknowledges Anthem's objections. (HaloMD Br., ECF No. 43 at PageID 536.)[20]

Finally, Defendants' arguments about causation are premised on factual assertions that directly contradict Anthem's well-pleaded allegations. Defendants fail to address allegations that, as a result of Defendants overwhelming the IDR Portal with thousands of fraudulent disputes, Anthem must (1) spend time and money to identify the fraud and submit an objection to eligibility (*e.g.*, AC, ECF No. 25 at PageID 159, 187, 191, ¶¶ 107, 217, 238), and (2) pay a $115.00 administrative fee that it cannot recover even if "the IDRE determines that the dispute does not qualify for IDR[.]" (*Id.* at PageID 150, ¶ 73.) Anthem incurs these damages as an immediate result of Defendants' submissions even before an IDRE is selected.

And while Defendants claim that IDREs conduct eligibility assessments in each proceeding (HaloMD Br., ECF No. 43 at PageID 526, Provider Br., ECF No. 38-1 at PageID 272-73), the AC plainly alleges that (1) Defendants submit an avalanche of disputes simultaneously to overwhelm the IDR system, (2) IDREs often conduct only "a cursory review" of the "one-sided information" from Defendants, (3) IDREs "frequently rely on Defendants' false attestations of eligibility," and (4) IDREs are financially incentivized to find that disputes are eligible for IDR or else forego any payment. (AC, ECF No. 25 at PageID 149, 156-59, ¶¶ 68, 96-110.) And as detailed in the AC, (1) the only relevant language in the regulations directs IDREs to "review the information submitted in the notice of IDR initiation to determine whether the Federal IDR process applies" (*Id.* at PageID 197-98, ¶ 276; 45 C.F.R. § 149.510(c)(1)(v)) and (2) this notice includes only the initiating party's (*i.e.*, provider's) attestation. Defendants seek to dispute Anthem's well-pleaded allegations with a

[20] In any event, in *NOCO*, the plaintiff's negligence was its failure to abide by Amazon's policies, not its failure to successfully contest Amazon's investigation. *See* 35 F.4th at 485. Even if Anthem had withheld objections (which it did not), this is not the kind of "negligence" that would obviate proximate causation.

single informal and non-binding technical guidance document issued by the Departments. (ECF No. 43-4.) For the reasons stated in Section II.D, Defendants cannot rely on this document to override the plain language of the controlling regulations and Anthem's allegations. Defendants also cannot dispute causation by contradicting the well-pleaded allegations of the AC.

C. Anthem 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 do not establish a failure to adequately plead an enterprise.

First, Anthem has pled an "ongoing, coordinated behavior among the defendants that would constitute an association-in-fact," and has not simply "recast ordinary contractual relationships" as an enterprise. (*Compare with* HaloMD Br., ECF No. 43 at PageID 529.) There is nothing ordinary about the relationships between HaloMD and the Provider Defendants. These entities share employees, offices, and board members—and all are ultimately controlled by the LaRoques. (AC, ECF No. 25 at PageID 162-71, ¶¶ 122-56.)

Moreover, "the very concept of an association-in-fact is expansive," and is to be "liberally construed." *Boyle*, 556 U.S. at 944. "[A]n association-in-fact enterprise is simply a continuing unit that functions with a common purpose." *Id.* at 948. The AC alleges that Defendants[21] and other co-conspirators associated as part of the LaRoque Family Enterprise since at least January 2024, with the purpose of fraudulently seeking undue compensation from Anthem and others through

[21] Defendants are clearly distinct from the enterprise. "[I]ndividual defendants are always distinct from corporate enterprises . . . even when those individuals own the corporations." *In re ClassicStar Maare Lease Litig.*, 727 F.3d 473, 492 (6th Cir. 2013). And "corporate defendants are distinct from RICO enterprises when they are functionally separate, as when they perform different roles within the enterprise . . . ." *Id.* This enterprise consists of a web of interrelated companies and individuals, some of whom provide the underlying claims, and others who direct and make fraudulent submissions to the IDR portal. (AC, ECF No. 25 at PageID 34, ¶ 126.)

the IDR process. (*E.g.,* AC, ECF No. 25 at PageID 131-33, ¶¶ 3-11.) And it alleges that Defendants submitted thousands of fraudulent disputes since that time. (*E.g.*, *id.* at PageID 198, ¶ 279.) That is exactly the type of "ongoing, coordinated behavior among the defendants that would constitute an association-in-fact." *Begala v. PNC Bank, Ohio, Nat'l Ass'n*, 214 F.3d 776, 781 (6th Cir. 2000) (citation omitted); [22] *cf. Brown v. Cassens Transp. Co.*, 675 F.3d 946, 968 (6th Cir. 2012) (a principal working "in concert" with his agent constitutes an association-in-fact enterprise). Nothing more is required at the pleading stage.

Second, Anthem has adequately pled the Provider Defendants' participation in the LaRoque Family Enterprise.. This element "does not require [pleading or] proof of a managerial role." *United States v. Fowler*, 535 F.3d 408, 418 (6th Cir. 2008). Rather, Anthem need only allege that Defendants either made "decisions on behalf of the enterprise or . . . knowingly carr[ied] them out." *Id.* As detailed in Section III.B.1, the NSA Scheme is only possible because the Provider Defendants, despite being put on notice by Anthem that claims are ineligible for IDR, nevertheless authorize HaloMD to submit those claims through the IDR Portal. (AC, ECF No. 25 at PageID 154-56, 197 ¶¶ 88-93, 275.) Provider Defendants benefited from their participation in the NSA Scheme in obtaining millions of dollars in awards based on the submission of disputes that they know are ineligible. These facts go far beyond raising a plausible inference that Provider Defendants are involved in directing and carrying out the NSA scheme.

D. Anthem Pleads a Pattern of Racketeering Activity.

HaloMD contends that Anthem has failed to allege a pattern of racketeering activity because, other than HaloMD, it has not alleged that any other Defendant "submitted any false

[22] *Begala* recognized that "[a]n organization cannot join with its own members to undertake regular corporate activity and thereby become an enterprise distinct from itself." 214 F.3d at 781. But that applies solely to an enterprise consisting of a single company and "its own subdivisions, agents, [and] members." *Id.*

attestations, let alone committed at least two RICO predicate offenses." (HaloMD Br., ECF No. 43 at PageID 528.) But this argument relies on the false premise that Anthem failed to allege an act of wire fraud by each of the Defendants. The Sixth Circuit has categorically rejected the argument that "each defendant must have made a material misrepresentation" to support a claim for wire fraud, finding instead "the evidence need only show that each defendant participated in a scheme to defraud that involved a misrepresentation of material fact." *United States v. Birnie*, 193 F. App'x 528, 536 (6th Cir. 2006). As detailed in Section III.B.1, Anthem adequately pleads that the Provider Defendants actively participated in the submission of fraudulent disputes to IDREs and also financially benefited from these acts. And for the reasons stated in Section VI, Anthem likewise pleads active participation by the LaRoques. Anthem has met its burden to plead predicate offenses as to each Defendant.

E. Anthem Pleads a RICO Conspiracy.

Anthem clears the bar for pleading a RICO conspiracy under 18 U.S.C. § 1962(d), and Defendants' assertions to the contrary are unavailing. (HaloMD Br., ECF No. 43 at PageID 530; Provider Br., ECF No. 38-1 at PageID 280.) As an initial matter, as discussed in Sections III.A-D, Anthem adequately pleads a substantive RICO claim under 18 U.S.C. § 1962(c). But even if Anthem did not pled a substantive RICO cause of action, as discussed in Section III.C, Anthem alleges "the existence of an illicit agreement to violate the substantive RICO provision." *United States v. Sinito,* 723 F.2d 1250, 1260 (6th Cir. 1983); (s*ee, e.g.*, AC, ECF No. 25 at PageID 132-33, 152, 168, 171, ¶¶ 5, 9, 81, 143, 156.) The requirement to plead an agreement "does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Twombly*, 550 U.S. at 556; *see also Heinrich v. Waiting Angels Adoption Servs.*, 668 F.3d 393, 411 (6th Cir. 2012) (an

agreement can be inferred from defendants' involvement in the predicate acts).[23] Anthem has surpassed that requirement, both through explicit allegations of an agreement among the Defendants and the obvious inferences to be drawn from Anthem's allegations regarding Defendants' coordinated scheme to defraud Anthem and other victims.

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

Contrary to Defendants' arguments, Anthem adequately alleges its fiduciary status 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).

Anthem alleges that the employer sponsors of certain ERISA-governed health plans: (1) "delegate to Anthem discretionary authority to recover overpayments, including those resulting from fraud, waste, or abuse"; and (2) "delegate authority to Anthem to administer the IDR process on behalf of the plans" (AC, ECF No. 25 at PageID 136-37, 201, ¶¶ 28, 292.)

Exercising this discretionary authority, Anthem now seeks to enjoin and obtain equitable relief from Defendants' fraudulent practices. (*See* AC, ECF No. 25 at PageID 194, 195, ¶¶ 257, 262); *see also* 29 U.S.C. § 1132(a)(3) (fiduciaries may bring actions to "enjoin any act or practice

[23] Although an agreement *can* be inferred from the commission of predicate acts, the RICO conspiracy provision *also* applies to "an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense." *United States v. Tisdale*, 980 F.3d 1089, 1096 (6th Cir. 2020) (quoting *Salinas v. United States*, 522 U.S. 52, 65 (1997)). A defendant may indicate agreement to violate RICO "in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion." *Salinas*, 552 U.S. at 65. Far from imposing a higher pleading standard than for a section 1962(c) claim, as Defendants suggest, "the RICO conspiracy statute contains 'no requirement of some overt act or specific act' at all." *United States v. Rios*, 830 F.3d 403, 434 (6th Cir. 2016) (quoting *Salinas*, 552 U.S. at 63). In fact, "a plaintiff could . . . sue co-conspirators who might not themselves have violated one of the substantive provisions of § 1962." *Beck v. Prupis*, 529 U.S. 494, 506-07 (2000).

which violates any provision of this subchapter or the terms of the plan"). (AC, ECF No. 25 at PageID 201-02 ¶¶ 295-96, 298); 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 support dismissal.[24]

Nor is there any merit to Defendants' unsupported argument that Anthem is required to identify specific plans in the AC. The law is directly to the contrary. *See, e.g.*, *UnitedHealthCare Servs. v. Team Health Holdings, Inc.*, 3:21-cv-00364, 2022 WL 1481171, at *8 (E.D. Tenn. May 10, 2022) ("The interests of judicial economy counsel that United be allowed to produce the relevant documents for its ERISA claim in the normal course of discovery.").

Finally, Anthem pleads violations of ERISA. Under 29 U.S.C. § 1185e(c)(1)(B) and (2)(A), negotiations are a 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, ECF No. 25 at PageID 201-02, ¶ 296), Anthem pleads 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, *inter alia*, the commencement date of open negotiations and the attestation that the items or services are qualified for IDR resolution. 29 C.F.R. § 2590.716-8(b)(2)(iii)(A)(1)-(9). By pleading that Defendants submit falsify this required information, Anthem pleads violations of 29 U.S.C. § 1185e(c)(1)(B) and 29 C.F.R § 2590.716-8(b)(2)(iii)(A).[25]

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[24] In *Briscoe v. Fine*, plaintiffs failed to allege that any purported fiduciaries "undertook *individual* discretionary roles as to plan administration." 444 F.3d 478, 488 (6th Cir. 2006) (emphasis in original) (citation omitted). *Baxter v. C.A. Muer Corp.* upheld *summary judgment* in favor of the purported fiduciary where the plaintiff expressly disavowed any fiduciary status in its pleading. 941 F.2d 451, 455 (6th Cir. 1991).

[25] Without any supporting authority, Provider Defendants claim that the NSA somehow bars Anthem's claim for injunctive relief under ERISA. (Provider Br., ECF No. 38-1 at PageID 294.) ERISA expressly authorizes Anthem's

V. Anthem States Claims Under Ohio Law.

A. Anthem Pleads an OCAA Claim (Count III).

In challenging Anthem's OCAA claim, Defendants incorporate their arguments for dismissal of the federal RICO claim. (*See* Provider Br., ECF No. 38-1 at PageID 295; HaloMD Br., ECF No. 43 at PageID 530–31.) For the reasons stated in Section III, these arguments fail. Defendants further contend that Anthem has failed to plead at least one criminal act "not indictable as federal mail and wire fraud." (HaloMD Br., ECF No. 43 at PageID 530–31; Provider Br., ECF No. 38-1 at PageID 295.) But Defendants each concede that Anthem adequately pleads telecommunications fraud under Ohio state law while suggesting, without any authority, that this is insufficient. (Provider Br., ECF No. 38-1 at PageID 295; HaloMD Br., ECF No. 43 at PageID 531.) Courts have recognized that "telecommunications fraud" can "satisfy the predicate act requirements of the Ohio Corrupt [Activities] Act." *Williams v. Duke Energy Int'l, Inc.*, 681 F.3d 788, 803 (6th Cir. 2012); *In re Nat'l Prescription Opiate Litig.*, 440 F. Supp. 3d 773, 804 (N.D. Ohio 2020) ("'telecommunications fraud'. . . fulfill[s] the OCPA requirement to plead 'at least one incident other than a violation of' federal mail, wire, or security fraud statutes."). In addition, Anthem pleads theft by deception (Count IV), which independently fulfills this requirement. *See Baker v. Pfeifer*, 940 F. Supp. 1168, 1181 (S.D. Ohio 1996).

B. Anthem Pleads Theft by Deception (Count IV).

Anthem asserts a plausible claim for theft by deception. (AC, ECF No. 25, at PageID 192-94, ¶¶ 247-56.) Without citing a single legal authority, HaloMD makes three conclusory arguments to seek dismissal of Anthem's theft by deception claim. (HaloMD Br., ECF No. 43 at PageID 531-32.) None have any merit.

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claim. 29 U.S.C. § 1132(a)(3). There is no rational basis to suggest that Congress intended to limit ERISA claims at all, especially for prospective injunctive relief that is not available in IDR proceedings. *See also supra* at Section II.A.

First, HaloMD misstates the allegations of the AC as pleading only that Defendants submitted disputes based on a good faith belief in their eligibility, and that this "negates the requisite *mens rea* for theft." (HaloMD Br., ECF No. 43 at PageID 532.) But as detailed in Section III.B.1, the AC expressly alleges that HaloMD made thousands of knowingly false attestations of eligibility. *See also Robinson*, 99 F.4th at 357-59 ("Such numerous errors spanning multiple [] years support a showing of intent to defraud . . . rather than inadvertence.").

Second, HaloMD claims that eligibility is "a question of law" and that the "assertion of a legal contention" cannot be deceptive under this statute. (HaloMD Br., ECF No. 43 at PageID 532.) But Defendants make *purely* factual misrepresentations "such as the type of health plan at issue, negotiation dates, and supporting documentation." (AC, ECF No. 25 at PageID 131-32, ¶ 4.) And in any event, the statute expressly covers deception conveying "a false impression as to law, value, state of mind, or other objective or subjective fact." Ohio Rev. Code § 2913.01(A).

Third, HaloMD argues that the AC fails to allege that HaloMD obtained control over Anthem's funds. (HaloMD Br., ECF No. 43 at PageID 531.) But the AC alleges that "did pay[] millions of dollars in ineligible and/or inflated IDR payment determinations" to Defendants, and HaloMD retained a portion of those payments under its commission-based reimbursement model. (AC, ECF No. 25 at PageID 169, 194, ¶¶ 149, 256.)

C. Anthem Pleads Civil Conspiracy (Count V).

Anthem has asserted a plausible civil conspiracy claim based on Defendants' "express or tacit" agreement to "defraud Anthem through the abuse of the IDR process" and commit "unlawful acts, including wire fraud, fraudulent misrepresentation, and theft by deception." (AC, ECF No. 25 at PageID 195, ¶ 260.) HaloMD raises three unavailing arguments for dismissal.

First, it contends that Anthem has not alleged a predicate tort. (HaloMD Br., ECF No. 43 at PageID 533.) This argument fails for the reasons stated in Section V.B and V.D.

Second, it argues that Anthem does not adequately plead a "malicious combination" because there is no allegation of a "communication in which HaloMD agreed with any other Defendant to pursue an unlawful objective." (HaloMD Br., ECF No. 43 at PageID 533.) But "[t]he malicious combination element of civil conspiracy does not require a showing of an express agreement between defendants, but only a common understanding or design, even if tacit, to commit an unlawful act." *Huntington Nat'l Bank v. Guishard, Wilburn & Shorts, LLC*, 2:12-cv-1035, 2012 WL 5902916, at *7 (S.D. Ohio Nov. 26, 2012) (internal citation and quotation omitted). And in any event, the AC pleads that Provider Defendants have a contractual relationship with HaloMD in which they directly authorize HaloMD to submit fraudulent disputes on their behalf, with all Defendants having actual knowledge of the fraud and sharing in the ill-gotten gains. (AC, ECF No. 25 at PageID 151-161, 168-171, 194-95, ¶¶ 80–117, 143–56, 257–64.) This is sufficient to show a common understanding or design.

Third, HaloMD claims that intracorporate conspiracy doctrine precludes any finding of conspiracy among the Defendants because they acted as a unit and are related through ownership by the LaRoques. (HaloMD Br., ECF No. 43 at PageID 533-34.) But this doctrine only applies where the alleged conspiracy involves "a *single* corporation acting exclusively through its own directors, officers, and employees" *Bell v. Bell*, 132 F.3d 32 (6th Cir. 1997) (emphasis in original). It does not apply here.

D. Anthem Pleads a Violation of the ODTPA (Count VI).

Anthem alleges that HaloMD's fraudulent submissions to the IDR Portal, in which it knowingly mischaracterized the services rendered to Anthem subscribers, also render it liable for violating ODTPA. HaloMD's two arguments for dismissal on the pleadings fail.

First, citing Ohio Rev. Code § 4165.04(A)(1), HaloMD claims the ODTPA is inapplicable to conduct that "complies with the rules of, or a statute administered by, a federal agency."

(HaloMD Br., ECF No. 43 at PageID 534.) This argument fails for the simple reason that Anthem alleges HaloMD did not comply with the NSA, the proceedings of which are administered by private IDREs. (AC, ECF No. 25 at PageID 133, 140, ¶¶ 12, 38.)

Second, while recognizing that Anthem alleges deceptive trade practices under Ohio Rev. Code §§ 4165.02(A)(7), (A)(9), HaloMD nevertheless contends that these provisions only apply to cases involving commercial advertising, not statements in connection with IDR proceedings. (HaloMD Br., ECF No. 43 at PageID 534.) While other provisions of the statute do expressly apply to advertising (*e.g.* Ohio Rev. Code § 4165.02(A)(11), (13)), these provisions do not. Where, as here, a legislative body "omits from a statute a provision found in similar statutes, the omission is typically thought deliberate." *Turtle Island,* 284 F.3d at 1296.

Finally, there is no merit to Provider Defendants' suggestion that ODTPA cases require allegations concerning "confused consumers." (Provider Br., ECF No. 38-1, at PageID 295.) The language underlying this argument comes from decisions related to trademark issues (a subset of claims under the ODTPA), for which consumer confusion is a required element. *See Mulch Mfg., Inc. v. Advanced Polymer Sols., LLC*, 947 F. Supp. 2d 841, 864 (S.D. Ohio 2013) (discussing claims where a "producer misrepresents someone else's goods or services as his own.") (internal citation omitted); *c.f. Torrance v. Rom*, 2020-Ohio-3971, ¶ 54, 157 N.E.3d 172, 189 ((Ohio Ct. App. 2020) (allowing ODTPA where plaintiff engaged in a "purely commercial endeavor, and not a consumer transaction.")

E. Anthem Pleads Common Law Fraud (Count VII).

Anthem pleads all elements of common law fraud. As detailed in the AC, Defendants deliberately submitted thousands of knowingly false statements to the IDR Portal. In addition to deceiving Anthem, Defendants intended to deceive HHS and the IDREs, who could directly compel Anthem to pay fees and awards. As intended, (1) HHS relied on the false statements by

opening IDR proceedings and charging Anthem administrative fees, and (2) IDREs relied on the statements by issuing eligibility decisions and awards against Anthem.

HaloMD claims that the AC fails to satisfy Rule 9(b) because it "only" provides examples of fraudulent misrepresentations, "lumps together thousands of IDR initiations," and the misrepresentations were actual "a belief regarding statutory eligibility." (HaloMD Br., ECF No. 43 at PageID 536.) These arguments fail for the reasons stated in Section III.B.

HaloMD also contends that the AC "contains no facts creating a strong inference of scienter" and fails "to plead particularized facts showing HaloMD knew" that its attestations were false. (HaloMD Br., ECF No. 43 at PageID 536). But under Rule 9(b), "[s]cienter may be averred generally and inferred from circumstantial evidence." *In re National Century Fin. Enters., Inc., Inv. Litig.*, 617 F. Supp. 2d 700, 716 (S.D. Ohio 2009). The AC repeatedly alleges that HaloMD knew that disputes were ineligible. (*E.g.*, AC, ECF No. 25 at PageID 131-33, 151-52, 156, ¶ 3, 5, 9, 10, 80, 93.) The AC even identifies specific communications informing HaloMD and the Provider Defendants that disputes were ineligible. (*See* AC, ECF No. 25 at PageID 172-184, ¶¶ 159-205.) At the pleadings stage, the Court may reasonably infer that HaloMD, who was retained to submit Provider's disputes, reviewed these communications in the course of its duties and knowingly submitted false attestations of eligibility. *See Heinrich v. Waiting Angels Adoption Servs., Inc.*, 668 F.3d at 406 (plaintiff need only "set[] forth specific facts that make it reasonable to believe that defendant knew that a statement was materially false").

VI. Anthem States Claims against the LaRoques.

The AC adequately pleads claims against Alla and Scott LaRoque, directors of the LaRoque Family Enterprise. Contrary to their argument, Anthem need not rest its claims on a veil piercing theory. "If corporate officers commit an intentional tort . . . they can be held personally liable and plaintiffs need not pierce the corporate veil." *Ball Bros. Mach., Ltd. v. Direct Dev., LLC*, 4:08-cv-

02930, 2009 WL 2486128, at *2, at *6 (N.D. Ohio Aug. 11, 2009) (citation omitted); *see also Yo-Can, Inc. v. Yogurt Exch.*, 778 N.E.2d 80, 90 (Oh. App. 2002) (collecting cases).

"An officer can be liable for a tort committed by the corporation under his control, or with his participation or cooperation." *Onyx Envtl. Servs., LLC v. Maison*, 407 F. Supp. 2d 874, 879 (N.D. Ohio 2005) (citation omitted). And "[t]acit knowledge and approval is enough to create a jury question as to an officer's personal liability for a tort committed by a corporation." *Id.*; *see also Cent. Benefits Mut. Ins. Co. v. RIS Adm'rs Agency*, 638 N.E.2d 1049, 1054 (Ohio App. 1994) (finding "sufficient evidence" based on "appellant's position as president of RIS" and his "knowledge and approval, if only tacit, of the allegedly unauthorized use of collected premium funds"). The allegations in the AC reflect a husband-and-wife team using companies (and a tangled web of subsidiaries) they founded, own, direct, and control, to carry out the NSA Scheme. (*See*, *e.g.*, AC, ECF No. 25 at PageID 132, 163, 166, 167, 171, ¶¶ 7, 126-27, 134, 142, 156.)

None of the LaRoques' cited authorities support dismissal. To survive a motion to dismiss, Anthem need only "plead 'facts' that create a 'plausible inference' of wrongdoing" by each defendant. *In re Darvocet, Darvon, & Propoxyphene Prods. Liab. Litig.*, 756 F.3d 917, 931 (6th Cir. 2014). The LaRoques' authorities demonstrate that a plaintiff cannot meet this standard by simply stating that an individual defendant is affiliated with a corporate defendant. Ohio law requires some allegation that "agents, officers or employees of [a] corporation . . . specifically directed the particular act to be done, or participated, or co-operated therein." *Niederst v. Minuteman Cap., LLC,* 1:23-cv-117, 2024 WL 3522413, at *5 (N.D. Ohio July 24, 2024) (dismissing tort claims against individuals because the complaint simply asserted that they were publicly listed on a corporate defendant's website as "Team Members" or "Advisors"); *Garrett v. Morgan Cnty. Sheriff's Off.*, 792 F. Supp. 3d 771, 805 (N.D. Ohio 2025) (dismissing § 1983 claims

against individual defendants because the plaintiff did not plead any facts upon these individuals other than their names and "respective ranks").

Contrary to the LaRoques' hyperbole, this is not a case in which a plaintiff has brought claims against an "individual employed by a corporate defendant simply due to the nature of their employment based on a vague information-and-belief allegation of operational control." (LaRoque Br., ECF No. 40 at PageID 484.) Anthem alleges extensive facts to create a plausible inference that the LaRoques have operational control over HaloMD and MPower.

Scott LaRoque is the sole owner of MPOWERHealth. (AC, ECF No 25 at PageID 134, ¶ 17.) He is the founder and CEO of MPOWERHealth and exercises both managerial and operational control over MPOWERHealth and each of its subsidiaries, including the Provider Defendants. (*Id.* at Page ID 163, 166 ¶¶ 127, 134.) Alla LaRoque sits on the board of MPOWERHealth and served as its COO. (*Id.* at PageID 167, ¶ 140.) While serving as COO of MPOWERHealth, she founded Defendant HaloMD (*id.* at PageID 170, ¶ 151), of which she and Scott are the sole owners. (*Id.* at PageID 134, ¶ 15.) Alla LaRoque is also HaloMD's public face and directs its operations. (*Id.* at PageID 167, ¶ 141.) She runs HaloMD as a hands-on manager, overseeing its operations, practices, and finances, including the submission of fraudulent IDR disputes. (*Id.* ¶ 142.)

Through the LaRoques' managerial and operational control of HaloMD and the Provider Defendants, they have directed the NSA Scheme to fraudulently deprive Anthem of millions of dollars. (*Id.* at PageID 171, ¶ 156.) At a minimum, Anthem has plausibly alleged that they had tacit knowledge of and approved the NSA Scheme. *See Cent. Benefits*, 638 N.E.2d at 1054.

VII. Anthem Pleads a Claim for Declaratory and Injunctive Relief (Count X).

Claims "for declaratory and injunctive relief . . . must be linked to an underlying substantive claim for relief." (HaloMD Br., ECF No. 43 at PageID 539.) Here, Anthem's request for these

remedies is linked to substantive claims for the reasons stated in Sections II-V.

Anthem has requested three forms of relevant relief: declarations (1) "that Defendants' conduct in submitting false attestations and initiating IDR for unqualified IDR items or services is unlawful," and (2) "that IDR awards for such unqualified IDR items or services are not binding," and (3) "an injunction prohibiting Defendants from continuing to submit false attestations . . . or from seeking to enforce non-binding awards[.]" (AC, ECF No. 25 at PageID 202, ¶ 300.)

HaloMD challenges only the request for "a declaration that IDR awards for such unqualified IDR items or services are not binding." Citing to *Novel v. New York*, HaloMD suggests that "[c]ourts often refuse to exercise such discretionary authority when considerations weigh against it, including when the requested declarations effectively would result in the overturning of findings of other arbiters." (HaloMD Br., ECF No. 43 at PageID 174.) But in *Novel,* the court denied declaratory and injunctive relief solely based on "sovereign immunity." 2:13–cv–698, 2014 WL 5858874, at *3 (S.D. Ohio Nov. 12, 2014). While the court alluded, *in dicta*, to concerns over potential "friction between federal and state courts," this case presents no such concerns.

VIII. In the Alternative, Anthem Should be Permitted to Cure Any Deficiencies Through Amendment.

Anthem 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, Anthem should be afforded leave to remedy any deficiencies. "[W]here 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." *Bledsoe I*, 342 F.3d at 644. Anthem's prior filing of an 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).

IX. Defendants Have no Entitlement to Fees.

HaloMD is not entitled to recover any fees under Ohio Rev. Code § 2747.01 *et seq*. for at least three reasons. First, the Ohio statute creates a specific procedural mechanism in state court that defendants must follow to obtain relief, including attorney's fees. The fee-shifting provision applies only "[i]f the court grants a motion for expedited relief under Section 2747.04 of the Revised Code [*i.e.*, the special anti-SLAPP hearing procedure.]" Ohio Rev. Code § 2747.05(A). Numerous federal courts in this district and others have refused to apply state anti-SLAPP fee-shifting provisions of this kind under similar circumstances. *See, e.g.*, *Croce v. Sanders*, 459 F.Supp. 3d 997, 1028 (holding that Indiana's anti-SLAPP statute does not apply because "the defendant must comply with the Act's procedural and substantive requirements[.]").

Second, Ohio's statute only applies to actions "based on" a defendant's communication in or related to "a legislative, executive, judicial, administrative, or other governmental proceeding" or the defendant's exercise of First Amendment rights. Ohio Rev. Code § 2747.01(B)(1)-(3). It expressly does not apply to "[a] legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the cause of action arises out of communication related to the person's sale or lease of the goods or services." *Id.* § 2747.01(C)(3). As discussed in Section II.C., Defendants' NSA Scheme and false statements are not made in a "legislative, judicial, administrative, or other governmental proceeding." And the statute's "sale or lease of goods or services" exception applies, as Anthem's claims relate to Defendants' sale of services.

Third, for the reasons set forth *supra*, Anthem has stated claims upon which relief can be granted, barring HaloMD from recovering attorneys' fees even if Ohio Rev. Code § 2747.01 *et seq.* applied. Ohio Rev. Code § 2747.04(C)(3)(a).

CONCLUSION

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

Dated: December 17, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jason T. Mayer, certify that on this 17th day of December 2025, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the Electronic Filing System, which will send notification of such filing to all counsel of record.

/s/ Jason T. Mayer