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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY, a California corporation, BLUE CROSS OF CALIFORNIA DBA ANTHEM BLUE CROSS, a California corporation,

Plaintiffs,

v.

HALOMD, LLC; ALLA LAROQUE; SCOTT LAROQUE; MPOWERHEALTH PRACTICE MANAGEMENT, LLC; BRUIN

Case No. 8:25-cv-01467-KES

Hon. Karen E. Scott

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

NEUROPHYSIOLOGY, P.C.; iNEUROLOGY, PC; N EXPRESS, PC; NORTH AMERICAN NEUROLOGICAL ASSOCIATES, PC; SOUND PHYSICIANS EMERGENCY MEDICINE OF SOUTHERN CALIFORNIA, P.C.; and SOUND PHYSICIANS ANESTHESIOLOGY OF CALIFORNIA, P.C.,

Defendants.

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INTRODUCTION

The Amended Complaint ("AC," at ECF No. 50) seeks to hold Defendants liable[1] for filing millions of dollars' worth of fraudulent disputes against Anthem through the "independent dispute resolution" ("IDR") process created by the No Surprises Act ("NSA"). As part of their "NSA Scheme," Defendants: (1) submit hundreds 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 Schemes work 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 and certify that they 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

[1] "Defendants" include (1) HaloMD, LLC ("HaloMD"); (2) Alla LaRoque; (3) Scott LaRoque; (4) MPOWERHealth Practice Management, LLC ("MPOWERHealth"); (5) Bruin Neurophysiology, P.C. ("Bruin"), iNeurology, PC ("iNeurology"), N Express, PC ("N Express"), and North American Neurological Associates, PC ("NANA") (collectively, the "LaRoque Family Providers"); and (6) Sound Physicians Emergency Medicine of Southern California, P.C. ("SPEMSC") and Sound Physicians Anesthesiology of California, P.C. ("SPAC") (collectively, "Sound Physicians Providers"). The LaRoque Family Providers and the Sound Physicians Providers are collectively referred to as the "Provider Defendants." "Anthem" includes both Plaintiffs Anthem Blue Cross Life and Health Insurance Company and Blue Cross of California d/b/a Anthem Blue Cross.

they (1) only require IDREs to consider the providers' unilateral attestation of eligibility, and (2) do not require that IDREs consider health 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[2] 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 Schemes 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 for the following reasons:

First, the jurisdictional arguments fail. Anthem has standing to recover millions of dollars in damages incurred as a direct result of Defendants' fraudulent NSA Schemes. And Defendants are subject to personal jurisdiction via the Racketeering Influenced and Corruption Organizations ("RICO") Act, Employee Retirement Income Security Act of 1974 ("ERISA"), and California long-arm statute.

Second, Defendants cannot avoid judicial review of their fraud. The NSA limits judicial review of individual IDRE payment determinations; it does not bar review of Defendants' NSA Scheme, through which they knowingly submitted hundreds of ineligible disputes. The *Noerr-Pennington* doctrine protects First Amendment activity, not fraudulent misrepresentations in private disputes. And

[2] This opposition responds to motions to dismiss the AC filed by (1) HaloMD ("HaloMD Br." at ECF No. 76-1), (2) MPOWERHealth and the LaRoque Family Providers ("MPOWER Br." at ECF No. 73-1); (3) MPOWER Health (as to jurisdiction) ("MPOWER 12(b)(2) Br." at ECF No 72-1); (4) Sound Physicians Providers ("Sound Br." at ECF No. 69-1); and (5) Alla LaRoque and Scott LaRoque ("LaRoque Br." at ECF No. 77-1).

collateral estoppel does not apply to eligibility "decisions," by partial IDREs who receive no compensation whatsoever if they find the dispute is ineligible.

Third, Anthem pleads all elements of its RICO claims. Moreover, the Ninth Circuit has not adopted the "litigation activities" exemption, which would not apply to IDR proceedings or Defendants' NSA Scheme in any event.

Fourth, the ERISA-governed plans at issue delegate to Anthem the authority to recover overpayments, and Anthem pleads violations of specific ERISA provisions and regulations.

Fifth, Anthem adequately pleads claims under California state law for the reasons stated in its accompanying Opposition to Defendants' Motions to Strike.

Sixth, Anthem adequately pleads all claims against Alla and Scott LaRoque, who are the central figures responsible for Defendants' wrongful conduct.

Finally, Anthem pleads viable claims for declaratory and injunctive relief to prevent future harm from Defendants' NSA Scheme.

BACKGROUND

Before the NSA, out-of-network providers engaged in the financially devastating practice of "surprise billing." AC, ¶ 39. 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.*; 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, ¶¶ 37-39.

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. AC, ¶¶ 1, 42. 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.,* ¶¶ 45-47; 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, ¶ 46; *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, ¶ 48; 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.*

I. 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, ¶ 48), HHS requires providers to initiate IDR though an eligibility screening tool on the IDR Portal (https://nsa-idr.cms.gov/paymentdisputes/s/). AC, ¶ 54. 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.*, ¶¶ 54-61. 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, ¶¶ 48, 55-59, 61. 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.*, ¶¶ 59-61.

For example, one of the Qualification Questions on the IDR Portal asks when the party began the open negotiation process. AC, ¶ 60. The Portal makes clear that "[t]he thirty business-day open negotiation period must elapse before starting the federal IDR process." *See id.* If the initiating submission is not made within four business days after the end of the open negotiation period, the initiating party must explain why it qualifies for an extension, along with supporting documentation. *Id.*, ¶¶ 61-62. Otherwise, the initiating party cannot proceed with initiation. *Id.*

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.*, ¶¶ 63-64. 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.*, ¶ 65. As soon as 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.*, ¶ 79.

II. 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 denotes. 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*; AC, ¶ 290. 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." AC, ¶ 84; *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. 76-8, at 1.

A. 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, ¶ 116; 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.*

B. 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, ¶¶ 80, 116; 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, ¶ 79. HaloMD alone submitted 134,318 disputes in the second half of 2024. *Id.*, ¶ 110. 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.

C. The NSA Enables Providers to Obtain Radically Inflated Rates Through IDR Payment Determinations.

Unless the IDRE decides that a dispute is ineligible and that it will forego payment, the dispute proceeds to a payment determination. AC, ¶ 74. The payment determination process is often described as "baseball-style" or "final offer" dispute resolution. *Id.,* ¶ 75. 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 rebut the other's offer. *Id.,* ¶ 290.

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, ¶ 76; 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, ¶ 84; *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. AC, ¶¶ 82-84. When providers prevail, they do so at a median rate that is over 4.5 times greater than the QPA. *Id.* In other words, by accessing the IDR system, providers recover a median rate over 459% higher than in-network market rates for identical services. *Id.* By flooding the NSA's IDR process with knowingly ineligible disputes, Defendants have secured some payments for ineligible Medicaid claims that are more than 4,200% higher than the applicable Medicaid rate. *See, e.g.*, *id*., ¶ 235.

III. The Parties.

Plaintiff ABC is a health care service plan licensed by the California Department of Managed Health Care. Its principal place of business is in Woodland Hills, California. AC, ¶ 12. It offers and administers claims for several different types of health care plans for California residents and companies. AC, ¶¶ 30-35. Plaintiff ABCLH (together with ABC, "Anthem") is an insurance company regulated by the California Department of Insurance. Its principal place of business is in Woodland Hills, California. AC, ¶ 13.

MPOWERHealth is a Delaware limited liability company based in Texas; its founder, ultimate sole owner, and CEO is Defendant Scott LaRoque. AC, ¶¶ 17-18. Through total control of MPOWERHealth, Scott LaRoque exerts managerial and operational control over all of its subsidiaries. AC, ¶¶ 141-42. MPOWERHealth recruits physicians and technicians for its subsidiaries and provides and coordinates their clinical services and legal, billing, and IDR functions. AC, ¶¶ 136-38. Scott LaRoque's wife, Defendant Alla LaRoque, was MPOWERHealth's COO and is a

current board member. AC, ¶¶ 16, 148, 158-59.

HaloMD is a Delaware limited liability company based in Texas that bills itself as "the premier expert in Independent Dispute Resolution." AC, ¶¶ 14, 152. It is ultimately owned by Scott and Alla LaRoque, who exert managerial and operational control over the company. AC, ¶¶ 15, 148, 162-64. Alla LaRoque is the founder and President of HaloMD. AC, ¶ 16. HaloMD submits massive numbers of IDR disputes for all Provider Defendants and other providers using AI and other automated tools. AC, ¶¶ 151-54. HaloMD operates on a commission model, taking a portion of the amount recovered through IDR on behalf of providers. AC, ¶ 157.

Defendants Bruin, iNeurology, N Express, and NANA (*i.e.*, the "LaRoque Family Providers") are California professional corporations and provide interoperative neuromonitoring ("IONM") services, including to California residents, and are each subsidiaries of MPOWERHealth. AC, ¶¶ 19-22, 140.

HaloMD, MPOWERHealth, and the LaRoque Family Defendants share multiple overlapping business and mailing addresses. *See, e.g.*, AC, ¶¶ 14, 17, 19-22, 136, 143-44, 146-47, 161. Roxy LaRoque, MPOWERHealth's Director of Client Experience, is the Authorized Official for hundreds of provider entities, including each of the LaRoque Family Providers. AC, ¶¶ 139, 143-44, 146-47. Other key executives, such as Brenda Thiele (Senior Manager of Treasury at MPOWERHealth) and Megan Rausch (COO of HaloMD and previously Vice President of Revenue Cycle Management at MPOWERHealth), likewise hold official positions across related entities. AC, ¶¶ 47, 160.

The websites for HaloMD and MPOWERHealth are also nearly identical in design and structure, and their contact pages are directly linked. AC, ¶¶ 163. 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*.

SPAC is a California professional corporation with its principal place of business in Brentwood, Tennessee. AC, ¶ 23. SPEMSC is a California professional corporation with its principal place of business also in Brentwood, Tennessee. AC, ¶ 24. Each of the Sound Physicians Providers contract with HaloMD to manage IDR disputes while also submitting a subset of their own disputes. AC, ¶¶ 215-219.

IV. Defendants' Fraudulent NSA Schemes.

Defendants launched their NSA Schemes to exploit the IDR process and defraud Anthem and other health plans on a massive scale. AC, ¶¶ 3-6, 92, 105-08, 110-11, 130, 206. To conduct their NSA Schemes, 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. AC, ¶¶ 90-93. Defendants often prevail in these processes because there is no meaningful opportunity for Anthem to contest their fabrications, and IDREs are financially incentivized and permitted by regulation to simply accept Defendants' misrepresentations as true. AC, ¶¶ 73, 86, 116-17, 296.

Defendants formed two enterprises to carry out their NSA Schemes. AC, ¶¶ 87-88. Under the direction and control of Scott and Alla LaRoque, the HaloMD Defendants, MPOWERHealth Defendants, and the LaRoque Family Providers formed the LaRoque Family Enterprise. AC, ¶¶ 130-34, 164. Similarly, HaloMD and the Sound Physicians Providers formed the Sound Physicians Enterprise. AC, ¶¶ 206-09. Both enterprises rely on HaloMD to exploit the IDR process and defraud Anthem and other health plans on a massive scale. AC, ¶ 89.

Each defendant plays a role in the scheme. To advance the shared purpose of

the LaRoque Family Enterprise, the LaRoque Family Providers perform services and generate claims that MPOWERHealth and HaloMD use to flood the IDR system with ineligible disputes. *E.g.*, AC, ¶¶ 164, 168-205. MPOWERHealth coordinates, facilitates, and directs the LaRoque Family Providers' operations and funnels their claims into IDR through HaloMD. AC, ¶¶ 135-140. HaloMD takes the claims generated by the LaRoque Family Providers and, in coordination with MPOWERHealth, uses them to systematically submit fraudulent disputes. *See, e.g.*, AC, ¶¶ 164, 171-172, 175, 180, 184, 190, 196, 202. Scott and Alla LaRoque manage and coordinate each of the corporate Defendants and the overall scheme. AC, ¶¶ 134, 135, 148-50.

Similarly, to advance the shared purpose of the Sound Physicians Enterprise, the Sound Physicians Providers performs services and generate claims that they and HaloMD use to flood the IDR system with ineligible disputes. AC, ¶¶ 206-09, 148-50; *see also, e.g.*, AC, ¶¶ 224-48. HaloMD takes the claims generated by the Sound Physicians Providers and, in conjunction with claims it collects from the LaRoque Family Providers, uses them to systematically submit fraudulent disputes. AC, ¶¶ 210-214; *see also, e.g.*, AC, ¶¶ 224-248.

At the heart of their NSA Schemes, Defendants knowingly make false representations and attestations of eligibility in submissions to the IDR Portal. AC, ¶¶ 96-104. These false statements are necessary steps for accessing the IDR process. AC, ¶ 4. Their false representations include, for example, knowingly initiating disputes that are not ripe for the IDR process because no open negotiation occurred. AC, ¶ 99. Defendants also misrepresent that claims subject to the California Surprise Billing Law are not covered by the state law and eligible for the IDR process. AC, ¶¶ 100. 82, 90, 161-205. These are not isolated events; Anthem estimates that hundreds of Defendants' disputes, including almost half that reached a payment determination, are ineligible for IDR. AC, ¶¶ 90, 118. 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.*, AC, ¶¶ 96-104, 287, 303.

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, ¶ 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. AC, ¶ 101.

In both NSA Schemes, Defendants strategically overwhelm IDR safeguards by using automated AI tools to submit massive numbers of disputes all at once. AC, ¶¶ 6, 92. For example, on May 3, 2024, Defendants initiated 126 separate IDR disputes against Anthem; Anthem's records show more than 75% were ineligible for IDR. AC, ¶ 112. 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, ¶ 93, 105-118. The LaRoque Family Enterprise's scheme often succeeds despite Anthem's frequent objections to eligibility and/or notices of ineligibility. *E.g.*, AC, ¶¶ 118, 171, 176, 181, 187, 193, 199, 205. The Sound Physicians Enterprise's scheme also frequently succeeds despite Anthem's frequent

objections to eligibility. *E.g.*, AC, ¶¶ 118, 223, 228, 234, 240, 247.

The final element in Defendant's NSA Schemes is what makes it so lucrative: Defendants submit, and often prevail with, hugely inflated payment demands. AC, ¶ 119. These demands far exceed what Defendants could recover in a competitive market and often exceed even Defendants' "inflated," "non-market-based" billed charges. *E.g.*, AC, ¶ 124.

The LaRoque Family Enterprise has carried out the NSA scheme for hundreds of claims. For example, on March 11, 2024, NANA provided a health care service to a member of a health plan administered by ABCLH. AC, ¶ 178. ABCLH issued a payment to NANA for the service in the amount equal to the QPA for that service. *Id.,* ¶ 179. Because the claim was covered by the No Surprises Act, ABCLH informed NANA that "[i]f you disagree with our decision, you can initiate the 30-day open negotiation period[.]" *Id*. Nonetheless, neither NANA nor HaloMD initiated open negotiations. *Id.,* ¶ 180. Over three months later, HaloMD initiated IDR, falsely attesting that the service was a qualified item and that NANA complied with the NSA IDR requirements. *Id*. Before making this false attestation, HaloMD would have also entered fictitious open negotiation dates and/or uploaded fabricated supporting documents to the IDR Portal when answering the Qualifications Questions. *See id.,* ¶¶ 60-62. ABCLH responded with an objection of eligibility to the IDRE and sent to NANA, specifically noting that the dispute did not qualify for IDR. *Id.,* ¶ 181. Yet neither NANA nor HaloMD withdrew the dispute, purposefully evading the measures on the IDR Portal meant to prevent IDR payment determinations for patently ineligible claims. *Id.* As a result, the IDRE proceeded to make a payment determination anyway and awarded NANA $9,843.83. *Id.,* ¶ 182. Anthem also paid $512.00 in related IDR fees. *Id.* In short, NANA knowingly recovered nearly 45% more than NANA's original billed amount in a dispute that it knew was ineligible for the IDR process. *Id*.

The Sound Physicians Enterprise has carried out the NSA scheme for hundreds of claims as well. For example, on February 9, 2024, SPEMSC provided a health care service to a member of a Medicaid managed care plan administered by ABC. AC, ¶ 230. ABC paid the Medicaid rate of $44.60 for the service; no QPA applied. *Id.* Claims for services rendered pursuant to a Managed Medicaid plans are not eligible for the NSA's IDR process. *See supra.* SPEMSC and HaloMD knew this claim was ineligible because ABC's remittance specifically stated the member belonged to a Managed Medicaid plan. AC, ¶ 231. Nevertheless, on March 13, 2024, SPEMSC included this claim with about eighty-eight other individual claims in its request for open negotiation. *Id.,* ¶ 232. On October 23, 2024, HaloMD initiated IDR and falsely attested to IDR eligibility on behalf of and in coordination with SPEMSC. *Id.,* ¶ 233. Despite Anthem's timely objection to eligibility for IDR because the claim involved a "Medicare/Medicaid claim ineligible for NSA," neither Defendant withdrew the dispute. As result, ABC was ordered to pay $1,880.00, or about 42 times the Medicaid rate, as well as $915.00 in IDR-related fees. *Id.,* ¶ 235.

V. Defendants' NSA Schemes Damage Anthem in Multiple Respects.

Defendants' NSA Schemes damaged Anthem in multiple independent ways. First, every time Defendants submit one of their hundreds 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, ¶ 79. Second, Anthem must spend enormous amounts of time and money to identify and contest Defendants' hundreds of fraudulent disputes. AC, ¶ 115. Third, through their fraudulent submissions, Defendants have (so far) obtained millions of dollars in improper IDR awards against Anthem. AC, ¶¶ 9, 118, 128, 253, 270, 116. Fourth, for each award in Defendants' favor, Anthem must also pay hundreds of dollars in fees to the IDRE. AC, ¶ 79. To date, Anthem has incurred hundreds of thousands of dollars in fees based on Defendants' fraudulent disputes, and it has been ordered to

pay millions of dollars in ineligible and/or inflated IDR payments based on Defendants' knowingly false statements. AC, ¶¶ 9, 112.

VI. Causes of Action.

Anthem asserts thirteen causes of action against both the LaRoque Family Enterprise Defendants and the Sound Physicians Enterprise Defendants for violations of federal RICO (Counts I, II, III, and IV); fraudulent misrepresentation (Counts V and VI); negligent misrepresentation (Counts VII and VIII); business acts or practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq*. (Counts IX and X); vacatur of IDR Determinations (in the alternative) (Count XI); violations of ERISA (Count XII); and equitable declaratory and injunctive relief (Count XIII). *See* AC, ¶¶ 249-371.

LEGAL STANDARD

On a motion to dismiss, the court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). 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 allege facts sufficient "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Rule 9(b)'s pleading standard applies to claims of fraud. Where a plaintiff alleges a scheme involving "hundreds or thousands" of misrepresentation, Rule 9(b) requires only that the plaintiff plead "examples" of the fraud with the requisite particularity. *See Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, No. CV14-03053 MWF (VBKx), 2015 WL 12778048, at *8 (C.D. Cal. Oct. 23, 2015).

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 14-15. 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) IDRE 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 14-15.

The LaRoque Family Providers claim the AC fails to plead that Anthem ever paid any IDR awards. MPOWER Br. 15. But the AC identified numerous specific payments that Anthem was compelled to make on ineligible disputes due to their NSA Scheme. AC, ¶¶ 172, 177, 182, 188, 194, 200, 205, 229, 235, 241, 248.[3] Moreover, regardless of whether Anthem has paid 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)); *City of San Diego v.*

[3] Providers cite the inapposite decision in *Scheid v. Fanny Farmer 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 requires the Court to "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).

Monsanto Co., 334 F. Supp. 3d 1072, 1082 (S.D. Cal. 2018) (same).

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). As detailed in Argument, Section III.B.2 *infra*, Anthem easily pleads that Defendants' conduct is the proximate cause of its injuries. But for the purposes of standing, traceability "is less demanding than proximate causation, and the 'causation chain does not fail solely because there are several links' or because a single third party's actions intervened." *O'Handley v. Weber*, 62 F.4th 1145, 1161 (9th Cir. 2023) (internal citation 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. 20. 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, ¶¶ 115, 268, 279), and (2) pay a $115.00 administrative fee, which it cannot recover even if "the IDRE determines that the dispute does not qualify for IDR[.]" *Id.*, ¶ 79. 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). 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, ¶¶ 61, 66. Absent Defendants' misrepresentations, IDREs would have no basis to resolve eligibility disputes and awards in their favor.

Redressability: Where, as here, a plaintiff seeks damages for past injuries,

"compensatory damages satisfy the redressability requirement for purposes of standing." *Clough v. Highway Auto. Pros LLC*, No. SACV2300107CJCJDEX, 2023 WL 4291826, at *4 (C.D. Cal. May 23, 2023). Anthem's injuries arise directly from Defendants' hundreds of fraudulent attestations. *See supra* at 14-15. And an order enjoining Defendants' NSA Schemes, 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).[4] Anthem easily meets this standard.

B. Anthem Pleads Personal Jurisdiction Over HaloMD, MPOWERHealth and the LaRoques.[5]

The nationwide service of process provisions in both the ERISA and RICO statutes provide personal jurisdiction over HaloMD, MPOWERHealth, and the LaRoques (the "out-of-state Defendants"). And the out-of-state Defendants are each also subject to specific jurisdiction in California under the California long-arm statute, Cal. Civ. Proc. Code § 410.10.

1. ERISA Jurisdiction.

ERISA's nationwide service of process provision confers personal jurisdiction in any federal court over any defendant who has minimum contacts with the United States. *See Board of Directors of Motion Picture Indus. Pension Plan v. Lucky Foot Productions, Inc.*, No. CV 19-2263 DSF (JCX), 2019 WL 13063385, at *2 (C.D. Cal. June 27, 2019); *see also Jorgensen v. Scolari's of California, Inc.*, No. SACV1401211CJCRNBX, 2014 WL 12480261, at *2 (C.D. Cal. Nov. 12, 2014). The out-of-state Defendants do not contest that they have minimum contacts with the

[4] HaloMD claims that Anthem should have pursued a new process to petition to reopen each of their hundreds of IDR proceedings. HaloMD Br. 15. The cited guidance states this process "is not intended to have the force of law." (*Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties*, ECF No. 76-8, at 1. The new process also does not state that it provides an exclusive remedy, and it could not remedy or enjoin Defendants' NSA Schemes.

[5] The Defendants organized and operating in California—Bruin; iNeurology; N Express; NANA; SPAC; and SPEMC (collectively, the "in-state Defendants" or "California-based Defendants")—do not contest personal jurisdiction.

United States. Contrary to their arguments (MPOWERHealth Br. 3; LaRoque Br. 11; HaloMD Br. 19 n.14), Anthem alleges a viable ERISA claim (*see* Section IV). Because Defendants offer no other challenge to this basis for jurisdiction, they are all subject to personal jurisdiction under ERISA.

2. RICO Jurisdiction.

The "ends of justice" provision of the RICO statute (MPOWERHealth Br. 3; HaloMD Br. 19 n.14) provides a second independent basis for personal jurisdiction over the out-of-state Defendants because: (1) the Court has personal jurisdiction over at least one alleged participant in the conspiracy; and (2) there is no district in which a court would have personal jurisdiction over all defendants. *See Aych v. Univ. of Az.*, No. 24-4710, 2025 WL 1641876, at *1 (9th Cir. June 10, 2025). Defendants do not contest that the Court has jurisdiction over the in-state Defendants, satisfying the first requirement. *See* AC, ¶¶ 19-24 (alleging the in-state Defendants are California professional associations located and operating in California). And there is no other district in which a court will have personal jurisdiction over all of the alleged co-conspirators. *See* AC, ¶¶ 14, 17 (two of ten Defendants subject to jurisdiction in Delaware), ¶¶ 23, 24 (two of ten Defendants subject to jurisdiction in Tennessee), ¶¶ 14-24 (eight of ten Defendants subject to jurisdiction in Texas). Because Anthem alleged a viable RICO conspiracy involving the out-of-state Defendants, personal jurisdiction is proper over all Defendants under RICO.[6]

3. California's Long Arm Statute.

The Court's also has specific jurisdiction over the out-of-state Defendants under California's long-arm statute, which permits the exercise of personal jurisdiction consistent with federal due process. *Patrizzi v. Lam*, No. CV 08-0322 AHM (CTX), 2008 WL 11336134, at *3 (C.D. Cal. May 19, 2008). For specific

[6] The Court can exercise pendent personal jurisdiction over Anthem's state law claims, which arise from the same facts as Anthem's ERISA and RICO claims. *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1181 (9th Cir. 2004).

jurisdiction, due process requires: (1) purposeful direction of activities toward or purposeful availment of the privilege of conducting activities in California by defendants; (2) the claim arises out of or relates to defendants' contacts with California; and (3) the exercise of jurisdiction comports with "fair play and substantial justice," *i.e.*, it is "reasonable." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

i. Purposeful Direction.

Defendants and Anthem agree that, because Anthem's claims sound in tort, the Court should apply the "purposeful direction" test. LaRoque Br. 9; *see Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). "Purposeful direction" is satisfied where defendant "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *See Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 980 (9th Cir. 2021). Courts focus "on the forum in which the defendant's actions were felt, whether or not the actions themselves occurred within the forum." *Yahoo! Inc.*, 433 F.3d at 1206.

Here, HaloMD solicited and represented California-based physician practices, including the in-state Defendants, in the intentional submission of fraudulent IDR claims against California-based Anthem. *See* AC, ¶¶ 6, 14, 103, 104, 132, 134, 151. MPOWERHealth acts as a physician management organization for the in-state Defendants (*i.e.*, California healthcare providers) and "centrally coordinates their IONM services and manages legal, billing, and *IDR functions*," which functions include coordinating the fraudulent IDR disputes. *See* AC, ¶¶ 135-40 (emphasis added). The intentional submission of fraudulent IDR disputes for the California-based Defendants against Anthem were intentional acts expressly aimed at a California business. *See id.,* ¶¶ 9-10, 12-13. These acts are also attributable to the LaRoques, *see* Section VI.

More importantly, Anthem felt the effects of the NSA Schemes in California, where it wasted resources responding to and paying meritless IDR awards as well as unnecessary IDRE and administrative fees. Taken together, these facts more than satisfy the purposeful direction test. *See, e.g.*, *Automattic Inc. v. Steiner*, 82 F. Supp. 3d 1011, 1025 (N.D Cal. 2015) (finding first prong met where "Plaintiffs allege that as a result of Defendant's fraudulent conduct, [plaintiff] spent substantial time and resources in dealing with the 'meritless' takedown notices and suffered reputational harm"); *see also AGA Serv. Corp. v. United Air Ambulance, LLC*, No. 16-CV-2663 W (WVG), 2017 WL 4271991, at *4-5 (S.D. Cal. Sept. 26, 2017) (finding purposeful availment where defendants wrongfully attempted to collect excessive additional payments for providers' services to California residents and filed appeals to California agencies).

ii. Defendants' Contacts with California.

The second prong requires that Anthem's claims arise out of or relate to the out-of-state Defendants' contacts with the forum. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021) (holding that the "relate to" requirement does not require a causal connection). Anthem's claims arise from the out-of-state Defendants' NSA Schemes, which include hundreds of ineligible IDR proceedings submitted on behalf of the California-based Defendants for services provided in California, and to obtain additional payments from Anthem, a California business. *See Automattic*, 82 F. Supp. 3d at 1025 (claim arose from notices sent by defendant to plaintiff in California). The second prong is thus satisfied.

iii. Fair Play and Substantial Justice.

Defendants bear the burden on the third prong and must "present a compelling case" that the exercise of jurisdiction would not be reasonable. *Schwarzenegger*, 374 F.3d at 802; *see also AGA Serv. Corp.*, 2017 WL 4271991, at *5-6 (listing the seven factors courts consider). Here, HaloMD and MPOWERHealth offer no case, and the

LaRoques' case is not compelling. LaRoque Br. 10.

The LaRoques incorrectly argue there is "no personal conduct directed at California." *Id.* The LaRoques are involved in the fraudulent NSA Schemes using California companies to target California victims. *See supra* at Argument, Section VI. The out-of-state Defendants thus fail to meet their burden to show jurisdiction would be unreasonable.

Finally, the LaRoque's reliance on the fiduciary shield doctrine does not change the analysis. *See* LaRoque Br. 10. First, courts apply the traditional minimum contacts analysis, not the fiduciary shield doctrine, where the state long-arm statute extends to the limit of constitutional due process, as in California. *See Davis v. Metro Prods., Inc.*, 885 F.2d 515, 522 (9th Cir. 1989); *Harris v. Chroma Cars, LLC*, No. EDCV 21-1492 JGB (SPX), 2022 WL 1844116, at *13 (C.D. Cal. Feb. 25, 2022). Second, the fiduciary shield doctrine does not apply when jurisdiction is based on the RICO or ERISA statutes. *See Davis*, 885 F.2d at 522. And third, the LaRoques are the driving force behind and directly control their fraudulent NSA Schemes. *See supra* at Argument, Section VI; *see also ProSource Discounts, Inc. v. Dye*, No. 2:19-CV-00489-AB-JC, 2019 WL 6729702, at *4 (C.D. Cal. July 23, 2019) (fiduciary shield doctrine did not protect defendant because his alleged tortious conduct "was the moving force behind the corporation's tortious conduct"); *Sihler v. Fulfillment Lab, Inc.*, No. 3:20-CV-01528-H-MSB, 2020 WL 7226436, at *5 (S.D. Cal. Dec. 2020) ("[T]he fiduciary shield doctrine may be ignored . . . by virtue of the individual's control of, and direct participation in the alleged activities.") (citation omitted).

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 Schemes, through which they knowingly submitted hundreds of ineligible disputes. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). 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)(i)(II). It does not limit judicial review of Defendants' NSA Schemes, through which they knowingly submitted hundreds of ineligible disputes. *See id.*[7]

[7] None of Defendants' authorities addressing the NSA involved a claim challenging IDR eligibility, much less a widespread scheme to knowingly initiate hundreds of 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"); *Mod.Orthopaedics of N.J., v. Premera Blue Cross.,* 2:25-cv-01087 (BRM) (JSA), 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

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 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 Schemes. 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 simply ignore this narrowing language. HaloMD Br. 15; MPOWER Br. 5. Nothing in the NSA suggests determinations concerning IDR eligibility are barred from review; it certainly does not state that a scheme involving hundreds of ineligible disputes is immune from

613, 620 (5th Cir. 2025) (dismissing claim by plaintiff who disputed payment determination, not eligibility).

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 Schemes.[8] 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 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. This is evident in Sound Physicians Providers' cited case law (Sound Br. 7), which addresses expansive judicial review provisions providing that "[n]o determination, finding, action, or omission under this chapter shall be subject to judicial review." *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 561 (9th Cir. 2019) (applying provision of the Congressional Review Act); *Montanans For Multiple Use v. Barbouletos*, 568 F.3d 225, 229 (D.C. Cir. 2009) (applying identical provision of

[8] 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.").

National Forest Management Act).[9] Congress could have insulated any decision by an IDRE from judicial review. Instead, it limited review only for determinations "under subparagraph (A)."[10]

Congress's decision to limit judicial review solely 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 Schemes involving hundreds of fraudulent misrepresentations as to eligibility.

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

[9] MPOWER Providers 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); *Pakootas v. Teck Cominco Metals, Ltd.*, 646 F.3d 1214, 1219 (9th Cir. 2011) (rejecting argument that "statute merely regulates timing, and is not a true jurisdictional statute").

[10] *Acker v. Tarr* is inapposite. That case simply applied a narrow bar on judicial review of discretionary military classification decisions because the plaintiff challenged precisely such a classification. 486 F.2d 654, 656 (7th Cir. 1973).

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." MPOWER Br. 8. Some 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; *Mod. Orthopedics 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"). Others denied petitions to vacate IDR payment determinations pursuant to the FAA 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, No: 8:24-cv-840-TPB-CPT, 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.*, 160 F.4th 1110, 1114 (11th Cir. 2025) (denying vacatur because IDRE's reasoning for payment determination is not subject to judicial review); *see also, e.g.*, *Avraham Plastic Surgery LLC v. Aetna, Inc.*, No. 25-cv-784 (OEM) (SDE), 2025 WL 3779084, at *1, 3, 7 (E.D.N.Y. Dec. 30, 2025) (denying petition to vacate IDR payment determinations under the FAA because "Petitioners thus fail to demonstrate that a zero-dollar award is a violation of [the IDRE's] duties under the NSA[.]"). The alleged facts and relief sought in those actions are not relevant to the AC.

Under 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). Anthem is seeking judicial review of Defendants' NSA Schemes, and not any individual IDRE payment determination. *See supra*. But to the extent the Court finds the Judicial Review Provision applies, Anthem is entitled to judicial review where, as here, the IDREs "exceeded their powers" by issuing payment determinations on disputes that were ineligible for IDR.[11] 9 U.S.C. § 10(a)(4).

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 hundreds of payment determinations for services that were not a "qualified IDR item or service." *E.g.* AC, ¶ 128. As contemplated by the Judicial Review Provision, this is a "case described in" 9 U.S.C. § 10(a)(4) because the IDREs

[11] *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.* is inapposite. The plaintiff in *Reach Air* argued that an IDRE exceeded its authority by applying an improper presumption in favor of the plan's (misstated) QPA when making a payment determination. 160 F.4th 1110, 1117 (11th Cir. 2025). The court noted that "an arbitrator's actual reasoning" for a payment determination was irrelevant to 9 U.S.C. 10(a)(4) because the sole question is whether "the arbitrator (even arguably) performed the assigned task." *Id.* at 1120. Here, Anthem argues that IDREs issuing awards for ***ineligible*** claims and thus strayed from their "assigned task." *See id.*

exceeded their authority by "purport[ing] to exercise powers that the parties did not intend [them] to possess." *EHM Prods., Inc. v. Starline Tours of Hollywood, Inc.*, 1 F.4th 1164, 1174 (9th Cir. 2021) (internal citation omitted).[12]

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. "[P]erjury materially related to an issue in the arbitration" is sufficient to meet this standard. *See Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383-84 (11th Cir. 1988).[13]

Defendants cite authorities like *A.G. Edwards & Sons* v. *McCollough* for the proposition that if fraud is "discovered and brought to the attention of the arbitrators, a disappointed party will not be given a second bite at the apple." 967 F.2d 1401, 1404. (9th Cir. 1992). But this principle presumes the existence of an opportunity to litigate the alleged fraud "at a confrontational, adversarial hearing[.]" *Pour Le Bebe, Inc. v. Guess? Inc.*, 112 Cal. App. 4th 810, 833 (2003) (cited with approval by *Mohazzabi v. Wells Fargo Bank, N.A.*, No. 22-15357, 2023 WL 4449179, at *1 (9th Cir. July 11, 2023)). Here, there was no such "confrontational, adversarial hearing" on eligibility. *See supra* at 5-8. While Anthem did often object to eligibility, 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); *see supra* at 5-8. Defendants have overwhelmed the IDR system as part of their NSA Schemes to push ineligible disputes through to payment determinations. *See supra* at 10-14. The IDREs

[12] Defendants cite *Schoenduve Corp. v. Lucent Techs., Inc.*, 442 F.3d 727, 733 (9th Cir. 2006) to suggest that courts must defer to an arbitrator's determination that a dispute is subject to arbitration. But that case involved an arbitrator's interpretation of a "submission agreement" purporting to define the scope of a dispute that undisputedly was encompassed within a contractual arbitration agreement. *Id*. The law is clear that "the question of whether the parties agreed to arbitrate" an issue in the first place "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).

[13] Defendants' citation to other cases involving fraud in IDR proceedings are inapposite. *See Guardian Flight*, 140 F.4th at 622 (plaintiff failed to plead any specific misrepresentation about QPA in single IDR proceeding); *Reach Air*, 160 F.4th at 1122 (same).

generally issue no written eligibility decisions at all, much less decisions addressing any claims of fraud. *See id.* at 5-8.

In any event, "[f]raud properly embraces a situation in which the supposedly neutral arbitrator exhibits a complete unwillingness to respond . . . to any evidence or argument in support of one of the parties' positions." *Pac. & Arctic Ry. & Nav. Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991). This is precisely what has occurred in the underlying IDR proceedings, in which IDREs are not required to consider Anthem's objections and are financially incentivized to disregard them. *See* AC, ¶ 116.

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 *Sander v. Weyerhaeuser Co.*, the Ninth Circuit reasoned that the bar on collateral attacks was necessary because the three-month notice requirement in FAA § 12 for a motion to vacate would be "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." 966 F.2d 501, 503 (9th Cir. 1992) (citing *Corey v. New York Stock Exchange*, 691 F.2d 1205, 1213 (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."); *Nickoloff v. Wolpoff & Abramson, L.L.P.*, 511 F. Supp. 2d 1043, 1044 (C.D. Cal. 2007) (disallowing collateral attack on contractual debt collection arbitration pursuant to National Arbitration Forum "National Arbitration Code of Procedure" and subject to all FAA procedural limitations); *Credit Suisse AG v. Graham*, 533 F. Supp. 3d 122, 133 (S.D.N.Y. 2021) (bar on collateral attacks rooted in § 12 time 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"); *Wachovia Sec., LLC, v. Wiegand*, No. 07CV243 IEG (BLM), 2007 WL 9776732, at *5 (S.D. Cal. Apr. 16, 2007) ("Unlike *Decker*, Wiegand did not allege that Wachovia's wrongful conduct in terminating his employment harmed him only by its impact on the Rooney award . . . Wiegand's statement of claim, taken on its face, is not a collateral attack on the Rooney award.").

Anthem is not seeking damages that it sought and failed to procure in the underlying IDR proceedings. Instead, Anthem is challenging Defendants' NSA Schemes—which are 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 XI).

First, Anthem seeks "[i]njunctive relief prohibiting the Provider Defendants and HaloMD from continuing to submit false attestations and initiate IDR for items or services that are not qualified for IDR" to prevent future injury from the NSA Scheme. AC, ¶ 369. Defendants cite no authority that could possibly preclude

prospective relief, which is not available in IDR or through vacatur.[14]

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 Argument, Section I.A. 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 hundreds 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 Schemes should therefore be immune to liability under the *Noerr-Pennington* doctrine. *E.g.*, HaloMD Br. 17.

Defendants' argument is inappropriate at the motion to dismiss stage. The question of whether "something is a genuine effort to influence government action, or a mere sham is a question of fact." *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1253-54 (9th Cir. 1982). Courts thus "rarely award *Noerr-Pennington* immunity at the motion to dismiss stage, where the Court must accept as true the nonmoving party's well-pleaded allegations." *Sonus Networks, Inc. v. Inventergy, Inc.*, No. C-15-0322 EMC, 2015 WL 4539814, at *2 (N.D. Cal. July 27, 2015); *see also In re Xyrem (Sodium Oxybate) Antitrust Litig.*,

[14] In *Texas Brine*, the plaintiff's only "equitable" relief was "disgorge[ment]" of amounts paid during the arbitration," not injunctive relief. 955 F.3d at 489.

555 F. Supp. 3d 829, 877 (N.D. Cal. 2021) (same).

In any event, Defendants' argument fails as a matter of law for at least two additional reasons. First, IDR disputes "before a private organization do not implicate the First Amendment," such that 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, "if the alleged anticompetitive behavior consists of making intentional misrepresentations to the court," it is not entitled to *Noerr* immunity. *Kottle v. Nw. Kidney Ctrs.*, 146 F.3d 1056, 1060 (9th Cir. 1998) (internal citation omitted).

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

Noerr immunity does not apply to Defendants' false statements made 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, which "guarantees the right 'to petition the Government for a redress of grievances.'" *Kottle*, 146 F.3d at 1059 (quoting U.S. Const. amend. I, cl. 6). The doctrine 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) (applying *Noerr* immunity to statement sin public court litigation). The Supreme Court created the doctrine to immunize legitimate efforts to lobby the government. *See, e.g.*, *BE & K Constr. Co. v. N.L.R.B.*, 536 U.S. 516, 525-27 (2002). The Ninth Circuit has consistently applied it only to actions that seek relief from a defendant's petitioning of the government. *See*, *e.g.*, *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006) ("Under the *Noerr–Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct."); *B&G Foods N. Am., Inc. v. Embry*,

29 F.4th 527, 535 (9th Cir. 2022) ("The doctrine immunizes petitions directed at any branch of government, including the executive, legislative, judicial and administrative agencies.") (quoting *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1092 (9th Cir. 2000)).

The AC alleges that Defendants submit false attestations of eligibility in non-public IDR proceedings before private IDREs. AC, ¶ 96. Such statements "before a private organization do not implicate the First Amendment." *Ford Motor Co.*, 972 F. Supp. 2d at 868-69. Because "the First Amendment only protects citizens from government conduct infringing on free speech," *Noerr* does not protect petitions to private companies, such as the IDREs. *Golden Eye Media USA, Inc. v. Trolley Bags UK Ltd.*, 525 F. Supp. 3d 1145, 1240–41 (S.D. Cal. 2021).

There is no precedent from the Supreme Court, the Ninth Circuit, or any other U.S. Court of Appeals to support applying *Noerr* immunity to petitioning directed to non-governmental bodies. Defendants can therefore cite only inapt, distinguishable, and unpersuasive decisions in their effort to stretch *Noerr* beyond its recognized scope. The MPOWERHealth Defendants assert that *Noerr* applies to IDR because "the IDR procedure has the character of an agency adjudication." MPOWERHealth Br. 15-16. But the only authority they cite for that proposition is *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, which held that *Noerr* immunity applies only where the harm at issue "is the result of valid *governmental* action, as opposed to private action." 486 U.S. 492, 499 (1998) (emphasis added); *see Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); (*Noerr* arises from "the right to petition . . . the Government" and applies only to allegations of harm to the plaintiff resulting directly from action by government officials); *see also Entrepreneur Media, Inc. v. Dermer*, No. SACV181562JVSKESX, 2019 WL 4187466, at *3 (C.D. Cal. July 22, 2019) (applying *Noerr* to conduct directed at the United States Patent and

Trademark Office, a federal government agency).[15]

HaloMD's and the Sound Physicians Providers' citation to *Viriyapanthu v. California*, No. SACV172266JVSDFMX, 2018 WL 6136150 (C.D. Cal. Sept. 24, 2018), also does not support application of *Noerr* to IDR. In that case, the plaintiff's claims arose from Mandatory Fee Arbitration Act ("MFAA") proceedings before the Orange County Bar Association ("OCBA"). *Id.* at *1. The district court dismissed the claims based on application of *Noerr* among other grounds. *Id.* at *7-*10.

At the outset, unlike IDR, there is a direct relationship between MFAA proceedings and litigation in the public courts because, by statute, "MFAA arbitration rulings are reviewable via a trial de novo in superior court." *Dorit v. Noe*, 49 Cal. App. 5th 458, 470 (2020). Moreover, the plaintiff in *Viriyapanthu* never disputed that petitions to the OCBA constituted First Amendment petitioning. To the contrary, he alleged "that OCBA acts with governmental authority," and "that the OCBA arbitrators who decided the arbitration award are actually government officials . . . ." *Id.* at *10 (internal quotation marks omitted). The issue of whether *Noerr* applies to non-government arbitral bodies was, therefore, never litigated. And on appeal, the Ninth Circuit affirmed on alternative grounds (failure to comply with Rule 9(b)), finding it unnecessary to address *Noerr* at all. 813 F. App'x 312, 313 (9th Cir. 2020).

Sound Physicians Providers' reliance on *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*, is likewise misplaced. 189 F. Supp. 2d 385, 392 (E.D. Va. 2002). *Eurotech* applied *Noerr* to an action arising from a single dispute brought under the World Intellectual Property Organization's ("WIPO") Uniform Domain Name Dispute Resolution ("UDRP") Policy. The court described WIPO as a "quasi-public organization that is an integral part of the United Nations." 189 F. Supp. 2d at 392.

[15] Defendants make false statements to HHS to access the IDR process, but *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); *see also Staley v. Gilead Sciences, Inc.*, No. 19-cv-02573-EMC, 2020 WL 5507555, at *16 (N.D. Cal. July 29, 2020) (finding that *Buspirone*'s holding against applying *Noerr* to such requests for ministerial action "provide[s] an accurate framework of analysis . . . .").

WIPO UDRP proceedings involve disputes over the public registration of Internet domain names; such proceedings involve formal complaints, arbitration records, and published reasoned decisions. *See id.*; *WIPO Guide to the UDRP*, WIPO, *available at* https://www.wipo.int/amc/en/domains/decisions.html.

WIPO UDRP proceedings bear no resemblance to IDR. IDREs are not a "quasi-public organization that is an integral part of" a public government agency. Unlike WIPO, Congress has not delegated authority directly to any of the private entities that serve as IDREs; rather, these private entities apply to the Departments to serve as IDREs and function as private contractors. These IDREs are faceless private companies who process thousands of IDR disputes each day. Moreover, IDR proceedings do not involve matters of public concern (*e.g.*, public registration of Internet domain names) or result in published reasoned decisions; they are purely private commercial disputes resulting in privately issued payment determinations with minimal justification or rationale. Because IDR proceedings do not implicate First Amendment concerns, *Noerr* does not apply.

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

Noerr does not apply to Defendants' NSA Schemes for a second, independent reason: Defendants' intentional misrepresentations of fact do not give rise 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."); *Clipper Exxpress*, 690 F.2d at 1261 ("There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body.").

The Ninth Circuit recognizes three circumstances in which the sham litigation exception to *Noerr* may apply. Anthem relies on one, in which the "allegedly unlawful conduct consists of making intentional misrepresentations" in an

adjudicatory proceeding.[16] *Sosa*, 437 F.3d at 938 (quoting *Liberty Lake*, 12 F.3d at 159) (internal quotes omitted); *see also Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005). Defendants' cited authorities confirm this principle exempts their NSA Schemes from *Noerr* immunity. *See Kottle*, 146 F.3d at 1063 (discussing misrepresentation exception but finding it inapplicable because plaintiff failed to plead any misrepresentations); *see also NM LLC v. Keller*, No. 3:24-cv-05181-TMC, 2024 WL 4336428, at *5 (W.D. Wash. Sept. 27, 2024) (explaining requirements for misrepresentation exception) (internal citation omitted); *U.S. Futures Exch., L.L.C. v. Bd. of Trade of the City of Chicago, Inc.*, 953 F.3d 955, 960 (7th Cir. 2020) (finding fraud exception inapplicable because agency was involved in legislative rule making, not adjudication.

Defendants contend that "Anthem's Amended Complaint does not plausibly allege that . . . [they] knowingly made any false attestations" (HaloMD Br. 18), but this argument fails for the reasons discussed in Section III.B. The AC unquestionably alleges that Defendants' false attestations "deprived the [IDR proceedings] of [their] legitimacy" by allowing initiation of IDR for disputes that were statutorily ineligible. *See Sosa*, 437 F.3d at 938. In the absence of Defendants' misrepresentation, there would have been no IDR proceedings at all. *Cf. Ford Motor Co. v. Knight L. Grp.*, No. 2:25-CV-04550-MWC-PVC, 2025 WL 3306280, at *11 (C.D. Cal. Nov. 24, 2025) (finding defendants' requests for allegedly inflated attorney's fees did not deprive proceeding of legitimacy because plaintiff conceded defendants were entitled to some portion of the requested fees).

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

[16] Defendants' arguments and authorities addressing the other two exceptions—in which plaintiffs are not actually trying to prevail in the underlying proceeding—are inapposite. *See, e.g.*, *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 555-56 (2014); *Pro. Real Estate Inv., Inc. v. Columbia Pictures, Indus.*, 508 U.S. 49, 60 n.5 (1993); *City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 380 (1991) *B&G Foods N. Am., Inc. v. Embry*, 29 F.4th 527, 538 (9th Cir. 2022); *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1095 (9th Cir. 2000); *Boulware v. State of Nev., Dep't of Hum. Res.*, 960 F.2d 793,798 (9th Cir. 1992); *Relevant Grp., LLC v. Nourmand*, 116 F.4th 917, 927-28 (9th Cir. 2024).

Defendants cannot invoke collateral estoppel because it 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 hundreds 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, ¶ 73; 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, ¶ 73. 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* 45 C.F.R. § 149.510(c)(1)(v); AC, ¶ 84. IDREs also have a vested financial interest in finding a dispute eligible because "they only receive compensation if a dispute reaches a payment determination." *Id.*, ¶ 116.

The Court should disregard Defendants' 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. 76-4 through 76-8. "[C]ourts may judicially notice that statements in public records were made, without noticing the correctness of those statements." *CrossFirst Bank v. Vieste SPE, LLC*, No. 24-7605, 2025 WL 3633294, at *2 (9th Cir. Dec. 15, 2025); *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) ("a court cannot take judicial notice of disputed facts contained in such public records").[17] Defendants cite

[17] *See also Romero v. Securus Techs., Inc.*, 216 F. Supp. 3d 1078, 1085 (S.D. Cal. 2016) ("While matters of public record are proper subjects of judicial notice, a court may take notice only of the

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. 14 (quoting ECF No. 76-5). 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. 76-8, at 1. Defendants cannot rely on nonbinding guidance to contradict the plain language of the NSA[18] and controlling regulations, which do not require a meaningful eligibility evaluation process.

Collateral estoppel is an affirmative defense, and "[t]he party asserting preclusion bears the burden of showing with clarity and certainty what was determined by the prior judgment. It is not enough that the party introduce the decision of the prior court; rather, the party must introduce a sufficient record of the prior proceeding to enable the trial court to pinpoint the exact issues previously litigated." *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1321 (9th Cir. 1992). As a result, "collateral estoppel cannot apply without a record showing the specific issues litigated in arbitration." *Crafty Prods., Inc. v. Fuqing Sanxing Crafts Co.*, 839 F. App'x 95, 98 n. 2 (9th Cir. 2020). Here, Defendants do not and cannot submit a record of any underlying eligibility "decision" to support their assertion of collateral estoppel for any IDR proceedings. 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 issue at stake was identical in both

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existence and authenticity of an item, not the truth of its contents.") (*citing Lee v. City of Los Angeles*, 250 F.3d 668, 689–90 (9th Cir. 2001)); *California Sportfishing Prot. All. v. Shiloh Grp., LLC*, 268 F. Supp. 3d 1029, 1038 (N.D. Cal. 2017) ("when courts take judicial notice of administrative records, only the existence of the documents themselves including the findings therein are judicially noticeable, and not the contents of the documents for the truth of the matters asserted").

[18] 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).

proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits." *Hansen v. Musk*, 122 F.4th 1162, 1172 (9th Cir. 2024). Defendants have not and cannot meet at least the first three elements.

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, ¶ 73; 45 C.F.R. § 149.510(c)(1)(v). The issue before this Court is categorically different: whether Defendants made hundreds of fraudulent attestations of eligibility to the IDR Portal as part of a scheme to defraud Anthem in violation of RICO, ERISA, and California 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").

1. Defendants' Fraud Was Neither Litigated Nor Necessary.

IDREs have no obligation to consider Anthem's objections and rarely, if ever, issue written decisions addressing those objections. Accordingly, Anthem's challenges to eligibility 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). Moreover, no IDRE has the authority to review Defendants' fraudulent NSA Schemes involving hundreds of ineligible disputes.

2. 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); *Clements v. Airport Auth. of Washoe Cnty.*, 69 F.3d 321, 328 (9th Cir. 1995) ("[W]e do not give preclusive effect to judgments rendered in proceedings that fail to comply with the minimum standards of due process"); *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").

"When determining whether a party received a full and fair opportunity to litigate an issue, the inquiry is whether the minimum due process requirements guaranteed by the fourteenth amendment are satisfied." *Caldeira v. Cnty. of Kauai*, 866 F.2d 1175, 1180 (9th Cir. 1989). And "[a]t a minimum, Due Process requires a hearing before an impartial tribunal." *Clements*, 69 F.3d at 333; *see also Collier v. Reliastar Life Ins. Co.*, 589 F. App'x 821, 823 (9th Cir. 2014) (collateral estoppel requires "a hearing before an impartial decision maker") (applying California law).

Under the NSA, however, IDRE eligibility "decisions" are not impartial. 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"); *Alpha Epsilon Phi Tau Chapter Hous. Ass'n v. City of Berkeley*, 114 F.3d 840, 844 (9th Cir. 1997) ("due process is violated if a decisionmaker has a 'direct, personal, substantial pecuniary interest' in the proceedings) (quoting *Tumey v. Ohio*, 273 U.S.

510, 523 (1927)); *Brewster v. City of Los Angeles*, 672 F. Supp. 3d 872, 965 (C.D. Cal. 2023) ("When procedures already lack avenues for a meaningful hearing, as do the procedures here, a potentially biased hearing officer serves to increase the chances of an erroneous deprivation of property."); *McNeil v. Cmty. Prob. Servs., LLC*, No. 1:18-cv-00033, 2021 WL 366776, at *18 (M.D. Tenn. Feb. 3, 2021) (collecting cases). IDREs only receive payment if they agree that a dispute is eligible. AC, ¶¶ 80, 116. This financial incentive flunks the judicial-impartiality requirement.

Indeed, HaloMD submitted 134,318 disputes in the second half of 2024. AC, ¶ 110. The IDREs deciding those disputes stood to earn tens of millions of dollars if, and only if, they decided eligibility in HaloMD's favor. AC, ¶ 80; 42 U.S.C. § 300gg-111(c)(5)(F). 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.

Separate from partiality, the "claim preclusive effect . . . does not hold universally" to non-judicial proceedings. *Littlejohn v. United States*, 321 F.3d 915, 921 (9th Cir. 2003). The law is clear that estoppel cannot apply where the procedures in the prior proceeding "provided [a party] with neither the tools nor the opportunity to fully litigate" the relevant issues. *Id.*; *see also Maciel v. Comm'r*, 489 F.3d 1018, 1023 (9th Cir. 2007) (If "procedural opportunities unavailable in the first action could readily cause a different result in the second action, then the results of the first action generally should not be given preclusive effect.") (internal punctuation omitted).

Collateral estoppel especially does not apply where, as here, the procedures in the prior proceeding were "tailored to the prompt, inexpensive determination of small claims" that would be "wholly inappropriate to the determination of the same issues

when presented in the context of a much larger claim." Restatement (Second) of Judgments § 28 (1982);[19] *Staub v. Nietzel*, No. 22-5384, 2023 WL 3059081, at *6 (6th Cir. Apr. 24, 2023) (courts may refuse to apply estoppel where "an earlier action involved relaxed rules of evidence, a system to quickly determine [claims], and concerned minimal amounts of damages"); *see Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 332 (1979) (collateral estoppel should not apply if there are "procedural opportunities available" in the second suit "that were unavailable in the first . . . [and] might be likely to cause a different result"); *Grimes v. BNSF Ry. Co.*, 746 F.3d 184, 188 (5th Cir. 2014) ("If the procedural differences might be likely to cause a different result, then collateral estoppel is inappropriate.").[20]

MPOWERHealth and the LaRoque Family Providers generalize that "[i]ssue preclusion includes administrative determinations and arbitration awards." MPOWER Br. 11. But their cited authorities confirm that courts must carefully consider the adequacy of procedures in prior proceedings. *See B & B Hardware, Inc.*, 575 U.S. at 158 (courts must ask "whether the procedures used in the first proceeding were fundamentally poor, cursory, or unfair"); *Hansen v. Musk*, 653 F. Supp. 3d 832, 835 (D. Nev. 2023), *aff'd*, 122 F.4th 1162 (9th Cir. 2024) ("[T]he parties exchanged pre-trial briefing and then participated in a three-day hearing, where several witnesses testified and were subject to direct examination, cross-examination, re-direct examination, and re-cross examination . . . The hearing was followed by an additional round of briefing.").

Here, Congress deliberately created IDR as an informal process to efficiently

[19] In deciding whether to apply collateral estoppel, the Supreme Court "regularly turns to the Restatement (Second) of Judgments." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015).

[20] *See also Helfrich v. Lehigh Valley Hosp.*, No. 03-cv-05793, 2005 WL 1715689, at *19 (E.D. Pa. July 21, 2005) ("[P]rocedural and economic disparities between unemployment compensation proceedings and later civil proceedings negate the preclusive effect of a Referee's factual findings."); *Cold Springs Farm Dev., Inc. v. Ball*, 661 A.2d 89, 91–92 (Vt. 1995) (informality of small claims court procedures render estoppel inapplicable); *Clusiau v. Clusiau Enters., Inc.*, 236 P.3d 1194, 1198–99 (Az. Ct. App. 2010) (collecting cases).

resolve what were expected to be relatively low-value payment disputes without the need for legal counsel. IDR "is not an arbitration"; rather, "IDR is—by statute—a highly-restricted process." *Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *6 (D.N.J. Nov. 3, 2025) (explaining the "differences [that] pervade the IDR and arbitration processes"). The parties are given a single opportunity to provide the referee with supporting documents and evidence . . . there is no opportunity for briefing, hearing, or appeal." *Id.* There is also no discovery, no evidentiary requirements, and no procedures to even view—much less verify or rebut—an opposing party's submission. AC, ¶ 290; *supra* at 5-8. And there is no requirement for IDREs to provide a reasoned decision. 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, district courts have discretion "to 'determine when [offensive collateral estoppel] should be applied' . . . [and] [o]ne of the most important considerations is whether the application would be unfair[.]" *Sec. & Exch. Comm'n v. Stuart Frost & Frost Mgmt. Co., LLC*, No. 8:19-CV-01559-JLS-JDE, 2021 WL 6103552, at *7 (C.D. Cal. Oct. 12, 2021) (quoting *Parklane Hosiery Co.*, 439 U.S. at 331)); *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 XI).

In the alternative to its common law and statutory claims, Anthem has also asserted a claim for vacatur. AC, ¶¶ 355-59 (Count XI). Defendants argue that

Anthem's grounds for vacatur do not satisfy the substantive requirements of 9 U.S.C. § 10(a). HaloMD Br. 24; MPOWER Br. 18; Sound Br. 7. 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. 24; MPOWER Br. 20 ("Anthem cannot plead vacatur en masse."). Defendants cite no authority for this proposition, nor do they provide any reasoned basis for imposing the various procedural requirements set forth "[u]nder 9 U.S.C. § 12" and other inapplicable provisions of the FAA. Sound Br. 9-10.[21] 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 complaint that brings a claim for vacatur under the NSA.

III. Anthem States Claims for Violations of RICO (Counts I-IV).

Defendants have committed extensive RICO violations, employing interstate wires to submit hundreds of fraudulent IDR submissions to Anthem, the Departments, and IDREs. AC, ¶¶ 3-11, 165, 221. 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

[21] Anthem need not "particularly allege the error infecting *each* challenged award under Rule 9(b)." MPOWER Br. 20. Defendants cite *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985), which does not address arbitral awards at all.

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 Ninth Circuit has not adopted the litigation activities doctrine. *See United States v. Koziol*, 993 F.3d 1160, 1174 (9th Cir. 2021) (acknowledging doctrine and declining to apply it to Hobbes Act claim). And this Court has at least two independent additional reasons not to apply it to Defendants' NSA Schemes. First, the policy reasons behind the doctrine do not apply to IDR. Second, in addition to deceiving the IDREs, Defendants' "litigation activities" here are also intended to deceive third parties (*i.e.*, the Departments), and their NSA Schemes target 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 hundreds of ineligible IDR proceedings against Anthem. AC, ¶¶ 86-95. 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 precisely why Defendants' NSA Schemes have succeeded.

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.").

When declining to apply the exemption in *Koziol*, the Ninth Circuit similarly observed that the doctrine was rooted in the procedural safeguards of litigation, including that the "the rigors of cross-examination and the penalty of perjury

sufficiently protect the reliability of witnesses," 993 F.3d at 1175, and the fact that litigants have "remedies and protections in state tort law through claims of malicious prosecution[.]" *Id*. at n.15.

The exemption has no place in the context of IDR proceedings. Unlike court litigation, IDR proceedings do not use "time-tested procedures[] to produce reliable results, separating validity from invalidity, honesty from dishonesty." *See 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.* IDR does not provide any opportunity for discovery, "the rigors of cross-examination," or "the penalty of perjury [to] sufficiently protect the reliability of witnesses." *Koziol*, 993 F.3d at 1175; *supra* at 5-8. 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 6-7; *see Harper*, 976 F.3d at 1241. IDR also cannot serve as the basis for a malicious prosecution claim.[22] *Compare with Koziol*, 993 F.3d at 1175, n.15 (civil litigants have "remedies and protections in state tort law through claims of malicious prosecution[.]").

Moreover, principles of res judicata and collateral estoppel do not apply to IDR proceedings. *Compare supra* at 5-8, *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, ¶¶ 109-10 (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.

[22] *Cf., e.g.*, *Brennan v. Tremco Inc.*, 25 Cal. 4th 310, 317 (2001) ("[T]ermination by contractual arbitration is simply not the sort of favorable termination needed to support a malicious prosecution action."); *Whitney v. J.M. Scott Assocs., Inc.*, 09-cv-5007099S 2012 WL 4747476, at *9 (Conn. Super. Ct. Sept. 7, 2012) (same); *Diamond, Resorts Int'l, Inc. v. Aaronson*, No. 6:17-CV-1394-ORL-37DCI, 2018 WL 735627, at *10 (M.D. Fla. Jan. 26, 2018) (predicting "Florida Supreme Court" would reject malicious prosecution claim premised on the outcome of an arbitration).

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. 76-8, at 1. 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.

That two out-of-circuit district courts[23] have applied the "litigation activities" exemption "to arbitration proceedings" (Sound Br. Br 22) is inconsequential. "[T]he IDR process is not an arbitration[.]" *Mod. Orthopaedics*, 2025 WL 3063648, at *5; *see id*. at *6-7 (explaining the "differences [that] pervade the IDR and arbitration processes"). It is a "highly-restricted process" in which there is "no opportunity for briefing, hearing, or appeal," whereas it is "far more common for arbitration to be a robust process, involving discovery, hearings and a limited possibility for appeal." *Id*. at 6.

2. The Exemption Does Not Apply Because Defendants Intentionally Deceive HHS and Target Other Insurers.

The RICO litigation activities exemption does not apply here for a separate, independent reason. Courts outside the Ninth Circuit that have adopted the exemption have nevertheless rejected its application 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.*, No. 1:18-cv-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020). Here, Defendants' NSA Schemes (i) seek

[23] Neither of Defendants' cited authorities considered whether the rule *should* apply to arbitration (much less IDR). *Republic of Kazakhstan v. Stati* dismissed a wire fraud claim premised on public litigation to enforce an arbitral award, 380 F. Supp. 3d 55, 61 (D.D.C. 2019), and, on appeal, the D.C. Circuit affirmed on alternate grounds, 801 F. App'x 780 (D.C. Cir. 2020). In *Diamond Resorts Int'l, Inc. v. Aaronson*, the court simply assumed without analysis that the rule applied to an arbitration demand. 2018 WL 735627, at *5-6 (M.D. Fla. Jan. 26, 2018). The issue was also immaterial; the plaintiff did not allege the arbitration contained false statements. *Id.* at *5-6, n.5.

to deceive the Departments, and not simply the IDREs; and (ii) target 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 the 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"). As explained by Sound Physicians Providers, "[t]he attestation is the gateway to the proceeding and payment determination." ECF No. 68-1 at 18. For this additional reason, the litigation activities exemption does not apply.

The exemption also does not apply because the NSA Schemes involve hundreds 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);[24] *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, Defendants resort to comparing (1) their systematic submission of hundreds 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. Sound Br. 2, 23; HaloMD Br. 21.[25] 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

[24] *Cf. Acres Bonusing, Inc. v. Ramsey,* No. 19-CV-05418-WHO, 2022 WL 17170856, at *11 (N.D. Cal. Nov. 22, 2022) (applying exemption to RICO claim premised "on payment of the billing invoices and substitution of counsel and Frank's verification of discovery responses and submission of declarations" in a single litigation); *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); *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 524 (5th Cir. 2016) (holding that plaintiff who *did not* plead mail or wire fraud could not sustain a RICO claim premised on unsupported argument that "bad faith litigation tactics alone constitute witness tampering").

[25] For example, Anthem amended its description of DISP-1289721 to address the Sound Physicians Providers' factual complaints, but the South Physicians Providers did not and cannot dispute that the IDR proceeding involved a knowingly ineligible dispute for a Medicaid claim for which they received payment in excess of billed charges and at 42 times the Medicaid rate due to their fraudulent NSA Scheme. *See* AC at ¶¶ 230-35. The Sound Physicians Providers also quibbled over the header – but not the substance – of the description of DISP-2639953, which Anthem corrected in the AC. *See id.* at ¶¶ 242-48.

of Defendants' schemes have 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, ¶¶ 54-67), and by setting forth the specific time, date, source, and content of demonstrative misrepresentations constituting wire fraud. *E.g.*, AC, ¶¶ 171, 175, 180, 204, 227, 233, 240, 246. Anthem also pleads 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.[26]

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

Anthem's allegations easily satisfy Rule 9(b). First, the Sound Physicians Providers erroneously contend that Anthem was required to plead the time, place, and contents for each of Defendants' hundreds of misrepresentations. Sound Br. 20. But where a plaintiff alleges a scheme involving "hundreds or thousands" of misrepresentations, Rule 9(b) requires only that the plaintiff plead "examples" of the fraud with the requisite particularity. *See Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, No. CV14-03053 MWF (VBKx), 2015 WL 12778048, at *8 (C.D. Cal. Oct. 23, 2015); *Leprino Foods Co. v. Avani Outpatient Surgical Ctr., Inc.*, No. CV 22-7434 DSF (JEMX), 2023 WL 11066072, at *3 (C.D. Cal. Apr. 26, 2023) (where plaintiffs allege "'hundreds' of instances of fraud," Rule 9(b) is satisfied by pleading "examples of the fraud[.]"). Here, Anthem alleges that Defendants engaged in "hundreds" of instances of fraud (*e.g.*, AC, ¶¶ 286, 307, 340) and pleads representative instances of fraud with particularity (*see id.*, ¶¶ 168–205,

[26] Anthem does not assert that the number of Defendants' IDR disputes, their inflated demands for payment, or their overall bad faith are additional "theories" of wire fraud. Sound Br. 22. Rather, these are attributes of the NSA Schemes that conceal their fraud and increase the schemes' effectiveness and profitability.

224–248).[27]

Second, Defendants argue that Anthem has failed to adequately plead fraudulent intent. HaloMD Br. 23; MPOWER Br. 13. But under Rule 9(b), "intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). Indeed, "the Ninth Circuit has held that a general allegation of scienter, including a simple allegation that the defendants had the requisite scienter, satisfies Rule 9(b)." *Grimes v. Ralphs Grocery Co.*, No. CV 23-9086 TJH (PDX), 2024 WL 5470432, at *4 (C.D. Cal. Aug. 9, 2024) (citing *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547 (9th Cir. 1994)); *see also SPS Techs., LLC v. Briles Aerospace, Inc.*, No. CV 18-9536-MWF (ASX), 2020 WL 12740596, at *17 (C.D. Cal. Jan. 17, 2020) ("'[P]laintiffs may aver scienter generally, just as the rule states—that is, simply by saying that scienter existed.'") (internal citation omitted).

Here, Anthem does not simply plead that Defendants knew the certifications of eligibility were fraudulent "without any stated factual basis." *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007); MPOWER Br. 22. Anthem alleges that Defendants knew their representations were false and sets forth facts demonstrating how and why they knew disputes were ineligible, including (i) specific communications from Anthem advising them that disputes were ineligible (*e.g.*, AC, ¶¶ 171, 176, 181, 187) and (ii) readily accessible information confirming disputes were ineligible. *See, e.g.*, *id.* at ¶ 287 (Defendants had access to, among other things, "patient's insurance cards, Anthem's EOPs, the plain text of federal laws and regulations, [and] CMS publications and resources[.]"). These allegations far exceed the requirement for pleading knowledge.[28]

[27] When a plaintiff asserts fraud against a corporate entity, the failure to identify the specific employees responsible for each individual misrepresentation is immaterial where, as here, plaintiffs plead sufficient information "so that the defendant can prepare an adequate answer from the allegations." *Odom v. Microsoft Corp.*, 486 F.3d 541, 555 (9th Cir. 2007) (internal citation omitted)

[28] The LaRoque Family Providers' citation to *Nuñag-Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1148-49 (C.D. Cal. 2011), is inapposite. *See* MPOWER Br. 13. That decision simply noted that intent was an element of mail and wire fraud but dismissed the underlying claim

Nor is there any merit to Provider Defendants' argument that Anthem has failed to plead their roles in their fraudulent NSA Schemes. Sound Br. 20, MPOWER Br. 12, 17. To be liable for mail or wire fraud, "[t]he defendant need not personally have mailed the letter or made the telephone call; the offense may be established where one acts with the knowledge that the prohibited actions will follow in the ordinary course of business or where the prohibited acts can reasonably be foreseen." *United States v. Johnson*, 297 F.3d 845, 870 (9th Cir. 2002).

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 the allegations deemed sufficient in *Crossley*. Unlike the unsophisticated defendants in *Crossley*, who simply provided names and deposited checks, Provider Defendants are sophisticated businesses that engage in open negotiation with Anthem and utilize HaloMD as their agent to submit millions of dollars of ineligible disputes to IDR. Provider Defendants are the source of the underlying services and all information submitted for these disputes and authorize their submission after being expressly advised by Anthem that they are ineligible for IDR. *E.g.*, AC, ¶¶ 168-172 (MPOWERHealth & Bruin), 173-182

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for failure to allege any "specific mailings or wire usage by Defendants." *Nuñag-Tanedo*, 790 F. Supp. 2d at 1149.

(MPOWERHealth & NANA), 183-200 (MPOWERHealth & N. Express); 201-205 (MPOWERHealth & iNeurology); 224-241 (SPEMSC); 242-248 (SPAC). And Provider Defendants (along with HaloMD) receive the fruits of their fraudulent NSA Schemes: millions of dollars in payments based on disputes that they knew were ineligible. *Id*., ¶118.[29]

Finally, Defendants' arguments that that the AC constitutes a shotgun pleading also fail. *See* Sound Br. 20; HaloMD Br. 23, n.17. "There is no flaw in a pleading . . . where collective allegations are used to describe the actions of multiple defendants who are alleged to have engaged in precisely the same conduct." *Blue Cross & Blue Shield Oklahoma v. S. Coast Behav. Health LLC*, No. 2:24-CV-10683 MWC (AJRX), 2025 WL 2004500, at *9 (C.D. Cal. June 20, 2025) (quoting *United Healthcare*, 848 F.3d at 1184). Anthem pleads specific facts as to each defendant's role in the NSA Schemes, representative examples of fraudulent disputes involving each defendant, and separate claims against each enterprise. *See* AC, ¶¶ 130-354.

2. Anthem Pleads Causation.

The AC plainly alleges that Defendants' NSA Schemes proximately caused Anthem's injuries. 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. *See* HaloMD Br. 20-21; MPOWER Br. 13-15. Courts consider three factors to assess proximate cause:

> (1) whether there are more direct victims of the alleged wrongful conduct who can be counted on to vindicate the law as private attorneys general; (2) whether it will be difficult to ascertain the amount of the plaintiff's damages

[29] MPOWERHealth's and the LaRoque Family Providers' citation to *In re Pac One, Inc.* is thus inapposite. No. 01-85027 MGD, 2007 WL 2083817, at *8 (N.D. Ga. July 17, 2007) (dismissing fraud claim where only allegation of conduct was that "Defendants, jointly and severally, engaged in activities and transactions in the name of 'Pac One, Inc.'").

> attributable to defendant's wrongful conduct; and (3) whether the courts will have to adopt complicated rules apportioning damages to obviate the risk of multiple recoveries."

Newcal Industries, Inc. v. Ikon Office Solution, 513 F. 3d 1038, 1055 (9th Cir. 2008) (reversing dismissal and holding that proximate causation under RICO is a fact-based issue that cannot be resolved on a Rule 12(b)(6) motion).

Defendants do not and cannot dispute that the AC pleads proximate causation under these factors. Defendants' fraudulent submissions in disputes with Anthem are intended to harm Anthem and Anthem alone. There are no more "direct victims of [Defendant's] fraud [who] would be likely to sue [Defendant]" and thus no victims whose "existence . . . would make it difficult to apportion damages" or "create a risk of multiple recovery against [Defendants]." *Newcal*, 513 F. 3d at 1055.

The fact that the IDREs are a necessary part of the scheme does not negate proximate causation. Halo Br. 20; MPOWER Br. 14. Under controlling Supreme Court law, the fact that a representation is made to and relied upon by IDREs does not constitute an "independent factor" that breaks the chain. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 656-59 (2008). It is sufficient to show that "someone relied on the defendant's misrepresentations" and, as a result, the plaintiffs were harmed. *Id.* at 658. A third party's conduct only breaks the causal chain if it was "a later cause of independent origin that was not foreseeable." *Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharm. Co. Ltd.*, 943 F. 3d 1243 (9th Cir. 2019) ("*Painters*").

In *Painters*, health insurers brought RICO claims against drug manufacturers for failing to disclose the risks of medications. The defendants sought dismissal on the grounds that physicians who prescribed the drug made independent medical decisions that constituted an intervening cause. *Id.* at 1257. The Ninth Circuit rejected

this argument, explaining that it was "perfectly foreseeable that physicians who prescribed [the drug] would play a causative role in Defendants' fraudulent scheme." *Id.* Similarly, here reliance by IDREs and the Departments was not only foreseeable but intended. *E.g.*, AC, ¶ 93.[30]

Defendants' arguments about causation are also premised on factual assertions that disregard Anthem's well-pleaded allegations. Defendants fail to address allegations that, as a result of Defendants overwhelming the IDR Portal with hundreds of fraudulent disputes, Anthem must (1) spend time and money to identify the fraud and submit an objection to eligibility (*e.g.*, AC, ¶¶ 115, 268, 279), and (2) pay a $115.00 administrative fee that it cannot recover even when "the IDRE determines that the dispute does not qualify for IDR[.]" *Id.*, ¶ 79. Anthem incurs these damages as an immediate result of Defendants' submissions, even before an IDRE is selected.

Finally, while Defendants claim that IDREs conduct eligibility assessments in each proceeding (HaloMD Br. 14), the AC 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 "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, ¶¶ 73, 93, 79, 117. And as detailed in the AC, 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."

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[30] Defendants' cited authorities are inapposite. *See Galen v. Cnty. of Los Angeles,* 477 F. 3d 652, 663 (9th Cir. 2007) (granting summary judgment, not a motion to dismiss, on 42 U.S.C. § 1983 claim for violation of the Eighth Amendment); *De Los Angeles Aurora Gomez v. Bank of Am., N.A.*, No. CV 12-8704-GHK (SHX), 2013 WL 12165673, at *6 (C.D. Cal. Aug. 21, 2013) ("Plaintiffs allege that Countrywide mailed the false business partner letters to some of the Plaintiffs during the loan application process, but they do not allege that they or anyone else relied on the false letters in deciding to obtain a Countrywide loan."); *Evans Hotels, LLC v. Unite Here! Loc. 30*, No. 18-CV-2763 TWR (AHG), 2021 WL 10310815, at *23 (S.D. Cal. Aug. 26, 2021) (dismissing RICO claim premised on extortion of third party because, among other things, the immediate target of the alleged extortion had a greater "incentive to sue Defendants").

Id., ¶ 116 (quoting 45 C.F.R. § 149.510(c)(1)(v)). That notice includes only the initiating party's (*i.e.*, provider's) attestation of eligibility. *See id.,* ¶ 73. Defendants seek to dispute Anthem's well-pleaded allegations with an informal and non-binding technical guidance document issued by the Departments. 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) a common purpose, (B) a structure or organization, and (C) longevity necessary to accomplish that purpose." *Ford Motor Co.*, 2025 WL 3306280, at *13. Defendants challenge only the common purpose and structure elements. The LaRoque Family Providers also argue that Anthem has failed to adequately plead their role in the enterprise. All these arguments fail.

1. Anthem Pleads a Common Purpose.

First, Anthem pleads a common purpose to commit fraud and not simply "routine commercial relationships." *Cf.* HaloMD Br. 22; Sound Br. 25. There is nothing ordinary about the relationships between HaloMD and the LaRoque Family Providers. These entities share employees, offices, and board members—and all are ultimately controlled by the LaRoques. AC, ¶¶ 130-64. And each of the Provider Defendants have fully joined their financial interests with those of HaloMD, which is responsible for submitting IDR disputes on behalf of each of the Provider Defendants and is paid on commission for every recovery. *Id.*, ¶¶ 157, 213.

To plead a common purpose, Anthem must allege that each Defendant was "aware of the 'essential nature and scope' of [the] enterprise and intended to participate in it." *United States v. Christensen*, 828 F.3d 763, 781 (9th Cir. 2015). And it need only allege "specific facts that move their allegations from the realm of

the possible to the plausible." *Shaw v. Nissan N. Am., Inc.*, 220 F. Supp. 3d 1046, 1057 (C.D. Cal. 2016) (reviewing filings in related case and finding "there were several instances where the parties demonstrated they lacked common purpose by reaching independent conclusions"). Here, the fact that the Defendants operate on a commission-based arrangement renders Anthem's allegations of a common purpose plausible because every Defendant has an immediate incentive to participate in the NSA Scheme. *See, e.g.*, *Blue Cross & Blue Shield Oklahoma*, 2025 WL 2004500, at *8 (finding adequate allegations of common purpose where alleged scheme would lead to "fraudulent billings to be split among Defendants"); *MSP Recovery Claims, Series LLC v. Amgen Inc.*, No. 2:23-CV-03130-MEMF-PD, 2024 WL 3464410, at *11 (C.D. Cal. July 15, 2024) (plaintiff plausibly "allege[d] facts as to why [defendants] would participate in the alleged scheme . . . executives at [each defendant] stand to make substantially more money as donations from pharmaceutical manufacturers increase.").[31]

Moreover, the AC pleads extensive facts supporting its assertion that Provider Defendants shared a common fraudulent purpose with HaloMD. *E.g.*, AC, ¶¶ 4-11. The AC alleges these Defendants submitted hundreds of fraudulent disputes after being *informed directly* by Anthem that these disputes were ineligible. *E.g.*, AC, ¶¶ 171, 176, 181, 187 (emphasis added). And it pleads concrete examples of fraudulent disputes establishing a clear pattern of deliberate misconduct by each of the Defendants. *E.g.*, AC, ¶¶ 171, 175, 180, 204, 227, 233, 240, 246.

This is not a case in which "alternative explanations for Defendants' actions abound." *Ford Motor*, 2025 WL 3306280, at *14. To initiate each of these fraudulent disputes through the IDR Portal, Provider Defendants had to authorize and submit

[31] This is also not a case in which the plaintiff makes conclusory allegations that independent actors with disparate economic interests agreed to engage in fraud. *Cf. Gardner v. Starkist Co.*, 418 F. Supp. 3d 443, 461 (N.D. Cal. 2019) (finding insufficient the allegations that "company 'stored, canned, and processed Defendants tuna products for sale' and 'knew' the products would be marketed as dolphin-safe").

detailed factual misrepresentations, including to multiple federal agencies. *See* AC, ¶¶ 54-67. It is not possible to explain these repeated actions as arising for "poor billing practices." *Ford Motor*, 2025 WL 3306280, at *14. Defendants' schemes of submitting an avalanche of disputes with hundreds of false certifications of eligibility resulting in millions of dollars in commercially unreasonable and exorbitant awards is not something that happens "by accident or as part of routine business dealings." *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, 295 F. Supp. 3d 927, 981 (N.D. Cal. 2018).

The AC's allegations are "more than adequate to establish, if true, that [Defendants] had a common purpose of increasing the number of [IDR disputes] through fraudulent means." *See Odom*, 486 F.3d at 552 (9th Cir. 2007); *see also Humana Inc. v. Mallinckrodt ARD LLC*, No. CV 19-06926 DSF (MRW), 2020 WL 3041309, at *7 (C.D. Cal. Mar. 9, 2020) ("Plaintiff has alleged a common purpose of increasing the number of people using Acthar, and doing so by fraudulent means[.]").

2. Anthem Pleads a Structure or Organization.

Second, and contrary to HaloMD's conclusory assertion, Anthem has alleged "an enterprise organization or structure as a vehicle for committing predicate crimes." HaloMD Br. 22. RICO's structural requirement requires only a "relationship among those associated with the enterprise." *Boyle*, 556 U.S. at 946. Neither a "hierarchy, role differentiation . . . [or] a chain of command" is required. *Id.* In this case, Anthem far exceeds the required allegations by alleging the specific roles played by each of the Defendants and the precise contractual arrangements binding them together. *E.g.*, AC, ¶¶ 4-11.

3. Anthem Pleads the LaRoque Family Providers' Role in the LaRoque Family Enterprise.[32]

Third, Anthem adequately pleads the LaRoque Family Providers' participation

[32] While Sound Physicians Providers have not raised the same challenge, these arguments apply with equal force to their role in the Sound Physicians Providers Enterprise.

in the LaRoque Family Enterprise. MPOWER Br. 18. "Like co-conspirators, knowing participants in the scheme are legally liable for their co-schemers' use of the mails or wires." *United States v. Stapleton*, 293 F.3d 1111, 1117 (9th Cir. 2002). Here, Anthem does not allege that LaRoque Family Providers were "[s]imply performing services for the enterprise." *Walter v. Drayson*, 538 F.3d 1244, 1249 (9th Cir. 2008). To the contrary, the LaRoque Family Providers were "indispensable to achievement of the enterprise's goal." *Id*. As detailed in Section III.B.1, the Enterprises can only achieve the NSA Schemes because the LaRoque Family Providers, despite being put on notice by Anthem that disputes are ineligible for IDR, authorize HaloMD to submit those disputes on their behalf through the IDR Portal. AC, ¶¶ 88-93, 275. The LaRoque Family Providers directly participated in and benefited from the predicate acts of wire fraud to obtain millions of dollars in awards based on the submission of disputes that they know are ineligible. AC, ¶¶ 96-104. These facts go far beyond raising a plausible inference that they 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 committed at least two RICO predicate offenses." HaloMD Br. 22. But this argument relies on the false premise that Anthem failed to allege an act of wire fraud by each of the Defendants. As detailed in Section III.B,1, a "defendant need not personally have mailed the letter or made the telephone call" to commit wire fraud. *Johnson*, 297 F.3d at 870 It is sufficient that 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.*, AC, ¶¶ 171, 175, 180, 204, 227, 233, 240, 246. As to the requirement that each defendant have committed two predicate acts, Anthem pleads two demonstrative disputes

involving predicate acts for MPOWERHealth & NANA (AC, ¶¶ 173-182), three involving MPOWERHealth & N. Express (id., ¶¶ 183-200), three involving SPEMC (id. ¶¶ 224-241), and additional disputes involving MPOWERHealth & Bruin (id., ¶¶ 168-172), MPOWERHealth & iNeurology (*id*., ¶¶ 201-205), and SPAC (id. ¶¶ 242-248). Moreover, even "'innocent' mailings—ones that contain no false information—may supply the mailing element." *In re WellPoint, Inc. Out-of-Network UCR Rates Litig.*, 903 F. Supp. 2d 880, 913 (C.D. Cal. 2012). For each of the demonstrative disputes listed in the complaint, the Provider Defendants were involved in at least two transmissions: (i) the submission of a claim to Anthem and/or (ii) the submission of a dispute through the IDR portal. Anthem has met its burden to plead two predicate offenses as to each Defendant. *See* AC, ¶¶ 168-205, 224-48. And the predicate acts identified in the AC are solely examples; Anthem alleges that all Defendants have engaged in hundreds of acts of wire fraud. *See* AC, ¶¶ 286, 291.[33]

E. Anthem Pleads a RICO Conspiracy.

Anthem easily clears the bar for pleading a RICO conspiracy under 18 U.S.C. § 1962(d). Initially, and as discussed in Sections III.A-D, Anthem adequately pleads a substantive RICO claim under 18 U.S.C. § 1962(c). And regardless of whether Anthem pleads a substantive RICO cause of action, "[i]t is the mere agreement to violate RICO that § 1962(d) forbids; it is not necessary to prove any substantive RICO violations ever occurred as a result of the conspiracy." *Oki Semiconductor Co. v. Wells Fargo Bank, Nat. Ass'n*, 298 F.3d 768, 774–75 (9th Cir. 2002). Moreover, "[t]he illegal agreement need not be express as long as its existence can be inferred from the words, actions, or interdependence of activities and persons involved." *Id.* at 775.

The requirement to plead an agreement "does not impose a probability

[33] To the extent the Court requires additional examples for pleading purposes, Anthem respectfully requests leave to amend and include those additional examples. *See infra* at Argument, Section VIII.

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. 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 schemes to defraud Anthem and other victims.

IV. Anthem States a Claim Under ERISA (Count XII).

Contrary to Defendants' arguments, Anthem adequately alleges its fiduciary status to pursue Count XII. 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, ¶¶ 33, 361. Pursuant to this authority, Anthem now seeks to enjoin Defendants' fraudulent and abusive practices to protect and control the management and disposition of plan assets. *See id.* at ¶¶ 364-365, 367; *see also* 29 U.S.C. § 1132(a)(3) (authorizing a fiduciary of a health plan to bring a civil action to "enjoin any act or practice which violates any provision of this subchapter or the terms of the plan" or "to obtain other

appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."); *see also FMC Med. Plan v. Owens*, 122 F.3d 1258, 1261 (9th Cir. 1997) (discussing right of fiduciary to seek injunctive and other appropriate equitable relief relating to the same).

Defendants' conclusory argument[34] that Anthem was required "to identify a[] specific health benefit plan" (HaloMD Br. 27) at the pleading stage is misplaced. Anthem is only required to allege the existence of ERISA plans and the terms thereof conferring fiduciary status. *See*, *e.g.*, *Nutrishare, Inc. v. Connecticut Gen. Life Ins. Co.*, No. 2:13-CV-02378-JAM-AC, 2014 WL 2624981, at *3 (E.D. Cal. June 12, 2014) ("Once the case is allowed to proceed to discovery, CIGNA would be required to specifically identify the plans at issue."); *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."). Here, Anthem has specifically alleged self-funded plans at issue that are subject to ERISA. *See* AC, ¶¶ 33, 361, 365. Anthem has also alleged the terms of those ERISA plans that confer discretionary authority to Anthem. *See* AC, ¶ 361. This is all that is required.[35]

Anthem also does, in fact, "seek to enjoin an actual ERISA violation." HaloMD Br. 26. Under 29 U.S.C. § 1185e(c)(1)(B) and (2)(A), negotiations are a

[34] Sound Physicians Providers cite out-of-circuit authorities for the proposition "Blue Cross affiliates routinely" argue that "they are not ERISA fiduciaries." Sound Br. 27. These cases do not involve "affiliates" of Anthem. More importantly, a party may be a fiduciary for certain purposes but not for others; it is necessarily a fact-specific question. *Del Prete v. Magellan Behav. Health, Inc.*, 112 F. Supp. 3d 942, 946 (N.D. Cal. 2015).

[35] Moreover, "[t]he issue of fiduciary status [for ERISA] is a mixed question of law and fact and courts typically will have insufficient facts at the motion to dismiss stage[.]" *Bagley v. KB Home*, No. CV 07-1754 GPS(SSx), 2008 WL 11340342, at *4 (C.D. Cal. Feb. 22, 2008) (citation and quotation omitted). Consequently, while fiduciary status may be decided on a motion to dismiss, where, as here, that determination rests on factual determinations, this district has previously held that "the pleading stage is too early to determine fiduciary status." *Id.* at *10.

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, ¶ 365), 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 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).

Finally, there is no merit to Defendants' argument that, because Anthem alleges violations of ERISA provisions that were enacted through the NSA, the NSA's Judicial Review Provision somehow bars Anthem's ERISA claim. MPOWER Br. 20; HaloMD Br. 27. Under 29 U.S.C. § 1132(a)(3), Anthem is authorized to bring an action to address conduct that "violates any provision of this subchapter." There are no exceptions. And there is no rational basis to suggest that Congress intended to limit actionable ERISA claims, especially for prospective injunctive relief that is not available in IDR proceedings. *See* § II.A.

V. Anthem States Claims Under California Law.

The AC pleads viable causes of action under California Law including fraudulent misrepresentation (Counts V & VI), negligent misrepresentation (Counts VII & VIII), and violations of Cal. Bus. & Prof. Code §§ 17200 (Counts IX & X). Anthem responds to Defendants' arguments with respect to these claims in the accompanying Opposition to Defendants' Motions to Strike (ECF No. 92).

VI. Anthem States Claims Against the LaRoques.

Defendants Alla and Scott LaRoque incorrectly argue that the claims against them fail because they did not personally submit false certifications (LaRoque Br.

13-16) and there is no basis for piercing the corporate veil (*id.* at 16-17). But corporate officers and directors can be personally liable if they "specifically directed" others "to commit the tortious act." *Driscoll's Inc. v. Cal. Berry Cultivars, LLC*, No. 2:19-cv-00493-TLN-CKD, 2022 WL 956863, at *5 (E.D. Cal. Mar. 29, 2022) (citation and quotation omitted). They can also be personally liable for "the corporation's tort" based on their own "tacit consent and knowledge of unlawful purpose." *Planned Parenthood Fed'n of Am., Inc. v. Newman*, 51 F.4th 1125, 1136 (9th Cir. 2022) (citation and quotation omitted). Officers and directors can even be held personally liable for failing to stop tortious conduct that "they knew or had reason to know about." *Spence v. Clary*, No. CV 20-11166 DSF (JPRx), 2021 WL 304391, at *3 (C.D. Cal. Jan. 29, 2021) (citation and quotation omitted). And they can be liable for conspiring "to injure third parties through the corporation[.]" *Wyatt v. Union Mortg. Co.*, 598 P.2d 45, 52 (Cal. 1979).

The AC alleges detailed facts establishing each of these bases for personal liability. "Alla LaRoque and her husband, Defendant Scott LaRoque, are at the center of the LaRoque Family Enterprise[,]" which "operates via a web of interrelated corporate entities they directly or indirectly control, including Defendants HaloMD, MPOWERHealth, and the LaRoque Family Providers." AC, ¶ 133. Scott LaRoque is the founder, CEO, and sole owner of MPOWERHealth and exercises both managerial and operational control over MPOWERHealth and each of its subsidiaries, including the LaRoque Family Providers. *Id.,* ¶¶ 17, 135. Alla LaRoque sits on the board of MPOWERHealth and served as its COO. *Id.,* ¶ 148. While serving as COO of MPOWERHealth, she founded HaloMD (*id.,* ¶ 159), which is owned solely by the LaRoques. *Id.,* ¶ 15. Alla LaRoque is not only the public face of HaloMD, she directs its operations as a hands-on manager, overseeing its finances, operations, and practices, including the submission of fraudulent IDR disputes. *Id.,* ¶ 149-50.

The LaRoques created and run these interrelated entities that carry out the

fraudulent NSA Schemes. The LaRoque Family Providers (subsidiaries of MPOWERHealth) perform the underlying services, and then they funnel the claims to HaloMD (also owned and operated by the LaRoques). Contrary to Defendants' arguments (LaRoque Br. 14, 17), Anthem's allegations of the LaRoques' "operational control" of defendant companies on "information and belief" are proper because the belief is plausible based on these available facts and more detailed facts on operations are "peculiarly within the possession and control" of defendants. *See Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. (2017) (recognizing *Twombly* allows factual allegations "upon information and belief" in such circumstances).

The LaRoques' arguments thus fail to show they can avoid personal liability here. First, the AC's allegations confirm that the LaRoques are "the 'guiding spirit' or 'central figure' behind wrongful conduct," which is sufficient to establish liability for corporate officers. *See McConkey v. Crawford*, No. CV 22-5834-MWF (AFM), 2022 WL 18278612, at *5 (C.D. Cal. Nov. 14, 2022) (citation omitted)). Second, through their managerial and operational control of HaloMD, MPOWERHealth and the LaRoque Family Providers outlined above, the LaRoques have knowledge of, tacitly consent to, and fail to stop the NSA Scheme. *See Planned Parenthood Fed'n of Am., Inc.*, 51 F.4th at 1136; *Spence*, 2021 WL 304391, at **3-4. And third, they failed to stop tortious conduct that—by virtue of their ownership and control over HaloMD and the LaRoque Family Providers—they "knew or had reason to know about." *Spence*, 2021 WL 304391, **3-4.

VII. Anthem Pleads a Claim For Declaratory and Injunctive Relief (Count XIII).

Defendants argue that Anthem's request for declaratory and injunctive relief (Count XIII) should be dismissed because each of the underlying claims fail and this claim "cannot stand on its own[.]" *See* HaloMD Br. 27–28. But, as discussed above, Anthem adequately pleads its underlying claims and thus this claim should survive.

See McCoy v. Alphabet, Inc., No. 20-CV-05427-SVK, 2021 WL 405816, at *13 (N.D. Cal. Feb. 2, 2021) (denying motion to dismiss independent claim for declaratory relief); *Wolf v. Wells Fargo Bank, N.A.*, No. C11-01337 WHA, 2011 WL 4831208, at *10 (N.D. Cal. Oct. 12, 2011) (same); *McMillin Mgmt. Serv., L.P. v. Am. Int'l Specialty Lines Ins. Co.*, No. 10-CV-1841 BEN NLS, 2011 WL 13239002, at *3 (S.D. Cal. July 5, 2011) (same).

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. "It is black-letter law that a district court must give plaintiffs at least one chance to amend a deficient complaint, absent a clear showing that amendment would be futile." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). 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).

CONCLUSION

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

Dated: January 30, 2026

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L.R. 11-6.1 CERTIFICATE OF COMPLIANCE

Pursuant to Section 28 of the Procedures of the Honorable Karen E. Scott, the undersigned, counsel of record for ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY and BLUE CROSS OF CALIFORNIA D/B/A ANTHEM BLUE CROSS, certifies that this brief, excluding the caption, the signature block, tables of contents and authorities, and any supporting documents, contains 22,728 words, which:

___complies with the word limit of L.R. 11-6.1.

[X] complies with the word limit set by court order dated January 27, 2026, ECF No. 90.

Dated: January 30, 2026

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