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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

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

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

Defendants' motions to strike the state law claims in Anthem's Amended Complaint ("AC," at ECF No. 50) are an unnecessary diversion.[1] Rather than address these claims in their contemporaneous motions to dismiss, Defendants have filed separate motions seeking attorney's fees under California's anti-SLAPP statute (Cal. Civ. Proc. Code § 425.16).[2] But the anti-SLAPP statute does not apply, and Defendants' facial attacks on the pleadings fail on multiple grounds.

First, the independent dispute resolution ("IDR") process created under the No Surprises Act ("NSA") is not an "official proceeding" subject to anti-SLAPP protection. While Defendants' filing of fraudulent IDR disputes constitutes false statements to multiple federal agencies, the agencies' roles are purely "ministerial" and do not implicate the anti-SLAPP statute. *Mindys Cosms., Inc. v. Dakar*, 611 F.3d 590, 597 (9th Cir. 2010). And while courts have recognized that hearings involving private adjudicators *may* qualify as official proceedings, they have done so solely where the proceeding involved formal fact adjudication at an actual hearing. IDR is an informal process in which private entities select one party's "offer" as the final payment rate; there are no hearings, findings of fact, testimony, or evidentiary standards of any kind. IDR thus does not constitute an "official proceeding."

Second, the motions are untimely as to all Defendants (other than MPOWERHealth and Scott LaRoque) because they were not filed "within 60 days of the service of the complaint[.]" Cal. Civ. Proc. § 425.16(f). And the fact that Anthem amended its complaint does not alter that conclusion because the AC does

[1] This opposition responds to special motions to strike filed by (1) HaloMD, Alla LaRoque, and Scott LaRoque ("HaloMD MTS" at ECF No. 78-1); (2) Sound Physicians Emergency Medicine of Southern California, P.C. and Sound Physicians Anesthesiology of California, P.C. (collectively "Sound Physicians Providers") ("Sound MTS" at ECF No. 68-1); and (3) Bruin Neurophysiology, P.C., iNeurology, PC, N Express, PC, and North American Neurological Associates, PC (collectively, the "LaRoque Family Providers"); and (4) MPOWERHealth Practice Management, LLC ("MPOWERHealth") ("MPOWER Joinder" at ECF No. 74). All defendants are referred to collectively as "Defendants." "Anthem" includes Plaintiffs Anthem Blue Cross Life and Health Insurance Company and Blue Cross of California d/b/a Anthem Blue Cross.

[2] "SLAPP" stands for "Strategic Lawsuit Against Public Participation." *Gopher Media LLC v. Melone*, 154 F.4th 696, 699, n.1 (9th Cir. 2025).

not plead "new causes of action that could not have been the target of a prior anti-SLAPP motion." *Novel v. Los Angeles Cnty. Sheriff's Dep't*, No. 219CV01922RGKAGR, 2020 WL 2089488, at *3 (C.D. Cal. Feb. 19, 2020).

Third, Defendants' arguments for dismissal of Anthem's state law claims fail on the merits. For the reasons stated in Anthem's Opposition to Defendants' Motions to Dismiss ("MTD Opposition"): (1) the NSA's judicial review bar is irrelevant to Anthem's claims; (2) Defendants' fraud is not immune under the *Noerr-Pennington* doctrine; and (3) Anthem adequately pleads misrepresentations in compliance with Rule 9(b). In addition, California's litigation privilege does not apply to IDR proceedings, and Anthem has adequately alleged its claims for violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, "UCL"), fraud, and negligent misrepresentation.

Fourth, Anthem's federal claims will survive regardless of the outcome of this motion. *See* MTD Opposition. Even if the Court were to dismiss state law claims (and it should not), Defendants would not be entitled to attorney's fees because "[t]he work involved in trying the case [would] not change," and thus "[t]he case w[ould] essentially [be] the same after the ruling on the special motion to strike as it was before." *Moran v. Endres*, 135 Cal.App.4th 952, 955 (2006).

Finally, California's anti-SLAPP statute cannot apply in federal court. Federal courts cannot apply state procedural laws that are "at odds" with the Federal Rules of Civil Procedure. *See Berk v. Choy*, No. 24-440, 607 U.S. ---- (2026), at 6. The Ninth Circuit acknowledges that California's anti-SLAPP statute is "at odds" with the Federal Rules. But rather than refuse to apply it, the Ninth Circuit has "spent years jerry-rigging" the California anti-SLAPP statute into a "contorted version" that "strip[s] away every major procedural aspect of the statute geared toward the early termination of claims." *Gopher Media LLC v. Melone*, 154 F.4th 696, 709, 716 (9th Cir. 2025) (9th Cir. 2025) (Bress, J., concurring). Prior to *Berk*, the Ninth Circuit was already poised to end its "misguided experiment of allowing California's anti-SLAPP

statute to apply in federal court." *Id.* at 709. The Supreme Court has now confirmed that the Ninth Circuit cannot "rewrite [state] law" to apply state procedural devices like the anti-SLAPP statute in federal court. *Berk*, No. 24-440, at 6, 8-9.

BACKGROUND[3]

The AC seeks to hold Defendants liable for flooding the IDR process with millions of dollars' worth of fraudulent disputes against Anthem.

Under the NSA, 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). To initiate disputes, the provider must answer "Qualification Questions," as well as submit an eligibility attestation through an online screening (the "IDR Portal") (https://nsa-idr.cms.gov/paymentdisputes/s/) created by the Departments of Health and Human Services ("HHS"), Labor, and Treasury (collectively, the "Departments"). *Id.*, ¶¶ 54-61. 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.

In contrast to arbitration, Congress designed IDR as a highly informal procedure to resolve what were expected to be 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 anonymous individuals—who are not required to have any legal training—on behalf of private entities (IDREs), not an identifiable judge or arbitrator. *See id.*

Once a provider submits a dispute through the IDR Portal, there is no

[3]In addition to this abbreviated statement of facts. Anthem respectfully incorporates by reference the fuller statement of facts set forth in the accompanying MTD Opposition.

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*. 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.

Defendants launched their "NSA Schemes" to exploit the IDR process and defraud Anthem and other health plans on a massive scale. AC, ¶ 86. To conduct their NSA Schemes, Defendants: (1) use interstate wires to make knowingly false attestations of eligibility to Anthem, the Departments, and IDREs; (2) use AI to 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, 116-117, 296.

To date, Anthem has incurred hundreds of thousands of dollars in fees based on Defendants' fraudulent disputes and has paid millions of dollars in ineligible IDR

payments based on Defendants' knowingly false statements. AC, ¶¶ 9, 112.

LEGAL STANDARD

"Code of Civil Procedure section 425.16[,] sets out a procedure for striking complaints in harassing lawsuits that are commonly known as SLAPP suits (strategic lawsuits against public participation), which are brought to challenge the exercise of constitutionally protected free speech rights." *Kibler v. Northern Inyo Cty. Local Hosp. Dist.*, 39 Cal.4th 192, 196 (2006), *as modified* (July 20, 2006). Per the California Code of Civil Procedure, movants may file a "special motion to strike" within 60 days of the service of a complaint that brings "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue . . ." Cal. Civ. Proc. Code § 425.16(b)(1), (f). The anti-SLAPP statute defines an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" to include a statement or writing "made before a legislative, executive, or judicial proceeding, or other official proceeding authorized by law." *Id.* § 425.16(e)(1).

To resolve special motions under California's anti-SLAPP statute, courts engage in a two-step inquiry. First, the movant must show that "the plaintiff's suit arises from an act in furtherance of the defendant's constitutional right to free speech." *Zaslavsky v. Consumer Att'ys Ass'n of Los Angeles*, No. 223CV06460SPGRAO, 2024 WL 1706627, at *4 (C.D. Cal. Mar. 14, 2024). Second, if the movant "satisfies its threshold burden, the burden shifts to the plaintiff to produce admissible evidence establishing a probability that it will prevail on the merits of its claims." *Id.*; *see* Cal. Civ. Proc. Code § 425.16(b)(1). However, in federal court, the Ninth Circuit previously held that "when an anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard." *Planned Parenthood Fed'n of*

Am., Inc. v. Ctr. for Med. Progress, 890 F.3d 828, 834 (9th Cir.), *amended*, 897 F.3d 1224 (9th Cir. 2018).

ARGUMENT

I. Anthem's Claims Do Not Arise from Protected Activity Because IDR Is Not an "Official Proceeding" Under the Anti-SLAPP Statute.

IDR is an informal offer submission and selection process adjudicated by private IDREs; it is not an "official proceeding" subject to anti-SLAPP protection. While Defendants' filing of fraudulent IDR disputes constitute false statements to multiple federal agencies (HaloMD MTS 9), the agencies' roles are purely "ministerial" and do not implicate the anti-SLAPP statute. *Mindys,* 611 F.3d at 597. And while courts have recognized that certain proceedings "established by statute to address a particular type of dispute" (HaloMD MTS 9) *may* qualify as official proceedings, they have done so solely where, unlike IDR, the proceeding involved formal fact adjudication at an actual hearing.

A. The Role of the Departments in IDR is Ministerial.

Defendants' filings of fraudulent attestations of IDR eligibility do constitute false statements to multiple federal agencies. Sound MTS 9. But "the mere fact of a government agency's involvement in a transaction does not, without more, make a proceeding 'official.'" *Li v. Jin*, 83 Cal. App. 5th 481, 493 (2022). For anti-SLAPP purposes, "'ministerial' acts involving primarily private transactions are not protected acts." *Mindys*, 611 F.3d at 597. The central question is whether the government is being asked to "determine some disputed matter as contemplated under the anti-SLAPP law." *Id*. at 597 (quoting *Blackburn v. Brady*, 116 Cal. App. 4th 670, 677 (2004)). If the government is simply providing "a nondiscretionary, ministerial act that involves no deliberation or discretionary decisionmaking," the proceeding is not official. *City of Indus. v. City of Fillmore*, 198 Cal. App. 4th 191, 217 (2011).

Here, HHS requires providers to initiate IDR though an eligibility screening

tool on the IDR Portal. 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.* But once a provider submits their certification of eligibility, the Departments do not engage in any decisionmaking process; they automatically transmit provider's submissions to IDREs.

The Departments themselves do not "determine some disputed matter as contemplated under the anti-SLAPP law." *C.f. Mindys Cosms.*, 611 F.3d at 597 (holding that because U.S. Patent and Trademark Office independently reviewed and decided attorney's trademark application, its role was not ministerial); *Li*, 83 Cal. App. 5th at 493 (finding IRS action not ministerial because it would assess application guided by "myriad tax court cases that examine detailed factual scenarios to decide whether particular organizations qualify for tax-exempt status"). To the contrary, the Departments' role is limited to facilitating the "transmission of" the notice of IDR initiation "based on" Defendants' false certifications of eligibility. *See City of Indus.*, 198 Cal. App. at 217. Because this "is a nondiscretionary, ministerial act that involves no deliberation or discretionary decisionmaking," filing a notice of IDR initiation through the IDR Portal does not render IDR an "official proceeding" subject to anti-SLAPP protection. *See id*.

B. IDR is an Informal Offer Submission Process, Not an Official Proceeding.

The informal IDR process does not constitute an "official proceeding" for the purposes of the anti-SLAPP statute because it does not involve formal findings of fact or hearings of any kind. "When nongovernmental entities are involved, courts have limited 'official proceeding' anti-SLAPP protection to (1) quasi-judicial proceedings that are part of a comprehensive statutory licensing scheme and subject

to judicial review by administrative mandate . . . and (2) proceedings established by statute to address a particular type of dispute." *Dorit v. Noe*, 49 Cal. App. 5th 458, 469 (2020) (internal citations and punctuation omitted); *see also Century 21 Chamberlain & Assocs. v. Haberman*, 173 Cal. App. 4th 1, 9 (2009) (explaining that private contractual arbitration is not an official proceeding).

Defendants assume, without any analysis, that IDR falls within the latter category "[b]ecause IDR proceedings are arbitration proceedings established by Congress." HaloMD MTS 9; Sound MTS 9-10. But decisions addressing which statutory procedures "constitute[] []'official proceeding[s]' are fact- and statute-specific." *Elec. Waveform Lab, Inc. v. EK Health Servs., Inc.*, No. B249840, 2015 WL 576595, at *8 (Cal. Ct. App. Feb. 11, 2015). Ultimately, "a private organization's proceedings constitute an official proceeding authorized by law if the proceedings display properties like those paradigmatic of a legal proceeding[.]" *Zaslavsky*, 2024 WL 1706627, at *6.

Indeed, in each of Defendants' cited authorities, the relevant "official proceeding" involved formal fact adjudication at an actual hearing with access to traditional discovery.[4] For example, *Philipson & Simon v. Gulsvig* held that Mandatory Fee Arbitration Act ("MFAA") arbitrations administered by state bar associations constitute official proceedings. 154 Cal. App. 4th 347, 358 (2007). But the reason that "MFAA arbitrations qualify as official proceedings [is] because they are both established by statute and part of the State Bar's comprehensive licensing scheme for attorneys." *Dorit*, 49 Cal. App. 5th at 469. Moreover, the relevant statute "impos[es] procedural requirements on the State Bar" to ensure a fair hearing, and "MFAA arbitration rulings are reviewable via a trial de novo in superior court." *Id.*

[4]Defendants misstate the holding of *Dean v. Kaiser Found. Health Plan, Inc.*, which did not find that a Uniform Domain-Name Dispute-Resolution Policy ("UDRP") proceeding qualified as an official proceeding. Rather, the court found that "[b]ecause the issue is uncontested, the Court accepts Defendants' arguments." 562 F. Supp. 3d 928, 934 (C.D. Cal. 2022). In any event, unlike IDR, UDRP proceedings involve extensive briefing, evidentiary disclosures, and live hearings. https://www.wipo.int/amc/en/arbitration/rules/.

at 470. And in addition to the availability of *de novo* judicial review, MFAA arbitrations involve a live hearing, with sworn testimony, and the availability of "subpoenas for the attendance of witnesses and the production of books, papers, and documents[.]" Cal. Bus. & Prof. Code § 6200(g).

As another example, the court in *Mallard v. Progressive Choice Ins. Co.* held that uninsured motorist arbitrations pursuant to California Insurance Code § 11580.2 constitute official proceedings. In reaching this determination, the court noted, among other things, that "Insurance Code section 11580.2, subdivision (f) specifically authorizes the use of subpoenas and other discovery devices in litigating uninsured motorist claim disputes," that "[t]he arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be deemed to be the trial of an issue therein," and that "all rights" under "Title 4 . . . of Part 4 of the Code of Civil Procedure shall be available to both the insured and the insurer[.]" 188 Cal. App. 4th 531, 540 (2010); *see also* California Insurance Code § 11580(f) (providing for access to interrogatories and depositions).

Similarly, in *Mission Beverage Co. v. Pabst Brewing Co., LLC*, the court indicated that statutory arbitration for valuing distribution rights under California's Alcoholic Beverage Control Act would also constitute an official proceeding. 15 Cal. App. 5th 686, 699 (2017). The relevant statute, Cal. Bus. & Prof. Code § 25000.2(f), provides for (1) disclosure of "all nonprivileged documents and other information relevant to the fair market value of the affected distribution rights," (2) "third-party discovery and additional discovery between [the parties]," and (3) a live hearing with witnesses, expert testimony, and the admission of expert reports. The statute also permits an appeal to Superior Court for an unrestricted review of "errors of fact or law." *Id.*[5]

[5] *See also Zaslavsky*, 2024 WL 1706627, at *6 (finding trade association expulsion hearing was "official proceeding" where member was granted in person hearing with right of appeal to trial court pursuant to Cal. Corp. Code § 7341).

In contrast, courts have declined to grant official proceeding status to any process that does not, at a minimum, provide for an actual hearing. *See, e.g.*, *Swanson v. Cnty. of Riverside*, 36 Cal. App. 5th 361, 371 (2019) ("As part of the peer review proceedings, practitioners must be given an opportunity for a noticed hearing and the presentation of evidence before a proposed disciplinary action occurs . . . No corollary exists for 72-hour detentions under the Welfare and Institutions Code."); *Altman v. Azrilyan*, No. B195061, 2008 WL 4182422, at *8 (Cal. Ct. App. Sept. 12, 2008) (notary process not official proceeding because, among other things, "[i]t does not involve a hearing like the hospital peer review procedure").

The decision in *Elec. Waveform* is instructive. In that case, the trial court had accorded official proceeding status to "utilization review (UR)" proceedings, a "process by which disputes over medical treatment plans for injured workers covered by California's workers' compensation statutes are resolved." 2015 WL 576595, at *1. The trial court premised its conclusion on the fact that UR proceedings are "a comprehensive administrative review procedure mandated by the Labor Code." *Id.*, at *7. On appeal, the plaintiff argued that UR was merely a "claims review" process that did not meet the criteria for an official proceeding. The Court of Appeal agreed and distinguished the UR process from attorney fee arbitrations:

> Defendant's reliance on a case holding that State Bar fee arbitrations are official proceedings (*Philipson & Simon v. Gulsvig*, *supra*, 154 Cal.App.4th at p. 358) only indicates that determinations of what constitutes an "official proceeding" are fact- and statute-specific. A critical distinction is that in fee arbitrations the very nature of the process—it is an arbitration, a traditional litigation substitute—distinguishes it, and led that court to determine it to be an official proceeding. By contrast, UR review is

> medical rather than legal and informal rather than formal.
>
> Fee arbitration has attributes which stand in stark contrast.

Id., at * 8.[6]

Here, IDR has none of the procedural attributes associated with the types of administrative and private arbitral proceedings that have been deemed "official proceedings" under the anti-SLAPP statute. Put simply, IDR "is not an arbitration"; rather, "IDR is—by statute—a highly-restricted process. 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." *Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *5-6 (D.N.J. Nov. 3, 2025). The IDREs do not provide any specific rationale or findings of fact in their boilerplate payment determinations (AC, ¶ 84), but they merely select of "one of the offers submitted . . . to be the amount of payment" with, at best, a threadbare recitation of the statutory factors that are required to be considered in the IDRE's decision. 42 U.S.C. § 300gg-111(c)(5)(A)(i).

IDR does not involve "a noticed hearing and the presentation of evidence." *Swanson*, 36 Cal. App. 5th at 371 (2019). Parties to IDR do not have access to "subpoenas and other discovery devices." *Mallard*, 188 Cal. App. 4th at 540. IDR decisions are not "reviewable via a trial de novo in [] court." *Dorit*, 49 Cal. App. 5th at 470. And the process is entirely "informal rather than formal." *Elec. Waveform*, 2015 WL 576595, at *8. California law does not support a finding that IDR is an "official proceeding."

II. The Motions to Strike are Untimely.

Defendants' motions should also be denied as untimely because they were not filed "within 60 days of the service of the complaint[.]" Cal. Civ. Proc. § 425.16(f); *see Novel*, 2020 WL 3884437, at *2 (confirming 60 day deadline applies to anti-

[6] The court further distinguished UR from the peer review process at issue in *Kibler*, noting that it did not involve public licensing and was not subject to judicial review. *Id.*, at *9.

SLAPP motions in federal court where, as here, they are "analogous to a motion to dismiss, not a motion for summary judgment"). With the exception of MPOWERHealth and Scott LaRoque,[7] Defendants filed their motions more than 100 days after they were served with the complaint. *Compare* Waivers of Service, ECF Nos. 17, 18, 22, 23, 26, 29-34, *with* HaloMD MTS (filed Dec. 12, 2025), Sound MTS (filed Dec. 12, 2025), *and* MPOWER Joinder (as to Alla LaRoque, filed Dec. 12, 2025). The motions should be denied on that basis alone.

The fact that Anthem filed an amended complaint does not alter the outcome. "An amended complaint reopens the time to file an anti-SLAPP motion without court permission *only if* the amended complaint pleads new causes of action that could not have been the target of a prior anti-SLAPP motion, or adds new allegations that make previously pleaded causes of action subject to an anti-SLAPP motion." *Novel*, 2020 WL 2089488, at *3 (emphasis in original); *see also Gopher Media LLC v. Melone*, No. 3:21-cv-01909-RBM-VET, 2024 WL 5442826, at *17 (S.D. Cal. Apr. 17, 2024) (finding anti-SLAPP motion untimely when challenging amended claims that were the same as earlier claims).

Here, Defendants do not and cannot contend that the filing of the AC provided a basis for exceeding the 60-day deadline. The AC did not add new causes of action; it simply divided the original complaint's state law misrepresentation causes of action among the Defendants, rather than including them all in a single count. *Compare, e.g.*, Comp. at 58, ECF No. 1 (Count III: Fraudulent Misrepresentation against all Defendants), *with* AC at 70 (Count VI: Fraudulent Misrepresentation against Sound Physicians Enterprise). Defendants have not even acknowledged the 60-day limitation, much less sought to justify the timing of their filings, and the Court should deny their motions on those grounds alone.

[7] Anthem does not make this argument with respect to MPOWERHealth or Scott LaRoque, who were served fewer than 60 days before they filed the motion to strike. *See* Waivers of Service, ECF Nos. 56, 58.

III. Anthem Pleads Viable State Law Claims.

Defendants' attack on Anthem's state law claims is also meritless. For the reasons stated in Anthem's MTD Opposition: (1) the NSA's judicial review bar is irrelevant to Anthem's claims; (2) Defendants' fraud is not immune under the *Noerr-Pennington* doctrine; and (3) Anthem adequately pleads misrepresentations in compliance with Rule 9(b). In addition, California's litigation privilege does not apply to IDR proceedings, and Anthem has adequately alleged its claims for violation of the UCL, fraud, and negligent misrepresentation.

A. Defendants' Judicial Review Provision and *Noerr-Pennington* Arguments Fail.

Defendants' Motions to Strike incorporate and/or restate arguments from their Motions to Dismiss, including that the *Noerr-Pennington*[8] doctrine and the NSA's judicial review bar preclude Anthem's state law claims. HaloMD MTS 8; 13; Sound MTS 13-16, 24, 26. These arguments fail for the reasons stated in Anthem's MTD Opposition at Sections II.A (judicial review bar) and II.C (*Noerr-Pennington*), each of which are incorporated herein by reference.

B. Anthem's Allegations Satisfy Rule 9(b).

Defendants' Motions to Strike likewise repackage arguments from their Motions to Dismiss contending that Anthem has failed to plead misrepresentations with particularly as required under Rule 9(b). Sound Physician Providers MTS 20; HaloMD MTS 12-13. This argument fails for the reasons stated in Section III.B of Anthem's MTD Opposition, which is incorporated herein by reference. Where, as here, 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.*

[8] Sound Physicians Providers claim that "[t]he anti-SLAPP law is coextensive with the *Noerr-Pennington* doctrine." Sound MTS 15. But their cited authority held only that "[t]he scope of the Noerr-Pennington doctrine is similar to the California litigation privilege (and the first part of the anti-SLAPP statute)." *Fitbit, Inc. v. Laguna 2, LLC*, No. 17-CV-00079-EMC, 2018 WL 306724, at *9 (N.D. Cal. Jan. 5, 2018).

UnitedHealth Grp., Inc., No. CV14-03053 MWF (VBKx), 2015 WL 12778048, at *8 (C.D. Cal. Oct. 23, 2015). Anthem satisfies this requirement with respect to Defendants by alleging the time, date, and content of numerous specific misrepresentations. *See, e.g.*, AC ¶¶ 230-235 (DISP-1289721); *id.* at ¶¶ 236-241 (DISP-1568233); *id.* at ¶¶ 242-247 (DISP-2639953).[9]

C. Litigation Privilege Does Not Apply

California's litigation privilege does not apply to Anthem's state-law claims because IDR is not a "judicial proceeding" or "other official proceeding authorized by law" under Cal. Civ. Code § 47.[10] IDR is not a judicial proceeding in a public court, and "[a]n official proceeding, for these purposes, has been interpreted to encompass those proceedings which resemble judicial . . . proceedings," including "quasi-judicial" proceedings. *Wang v. Peletta*, 112 Cal. App. 5th 478, 493 (2025) (internal citation and punctuation omitted).

IDR does not meet the standard for a "quasi-judicial" proceeding under California law. To determine whether a proceeding outside of the courts is quasi-judicial, California courts consider:

> (1) whether the administrative body is vested with discretion based upon investigation and consideration of evidentiary facts, (2) whether it is entitled to hold hearings and decide the issue by the application of rules of law to the ascertained facts, and (3) whether its power affects the personal or property rights of private persons.

[9] There is likewise no merit to Defendants' arguments that that the AC constitutes a shotgun pleading. *See* HaloMD MTS 13. "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 States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016)).

[10] Even were this court to determine that IDR qualifies as an "official proceeding" for purposes of the anti-SLAPP statute (and it should not), that determination would not bear on whether it is an "official proceeding" for purposes of the litigation privilege. *See, e.g.*, *Century 21*, 173 Cal. App. 4th at 10 ("The litigation privilege and the anti-SLAPP statute are substantively different statutes that serve quite different purposes" and are interpreted independently.).

Cirrus Beijing Corp. v. Adams, 772 F. App'x 600, 601 (9th Cir. 2019) (quoting *Picton v. Anderson Union High Sch. Dist.*, 50 Cal.App.4th 726 (1996)); *Mirmehdi v. United States*, 689 F.3d 975, 985 (9th Cir. 2012) (same).

IDR fails at least the first two factors. In addressing the first element, California courts have focused on whether, for example, the decisionmaker is required to investigate and address all material allegations of the parties. *Compare, e.g.*, *Picton,* 50 Cal. App. 4th at 738 ("[T]he Committee's primary purpose is to investigate and consider evidentiary facts," and the statute expressly requires that "the Committee 'shall investigate each allegation.'") *with Butler v. McCain & Assocs*., No. C074654, 2016 WL 1726018, at *6 (Cal. Ct. App. Apr. 27, 2016) (county surveyor not vested with requisite discretion where it was only required to "survey for mathematical accuracy and compliance with certain statutory requirements as to presentation and form").

In making payment determinations, IDREs do not engage in anything resembling an investigation of facts. They are only permitted to consider the information submitted by either party and are not empowered to (nor do they in practice) seek to validate the accuracy of competing facts submitted by either party. Similarly, when Defendants initiate IDR, the Departments are not empowered to investigate the veracity of Defendants' factual representations as to eligibility. And while the NSA regulations (not the statute) direct IDREs to confirm eligibility, they direct them to do so based solely on a review of the initiating provider's attestation. *See* 42 U.S.C. § 300gg-111; 42 C.F.R. § 49.510(c)(1)(v). IDREs are thus only *required* to review providers' submissions for "compliance with certain statutory requirements as to presentation and form." *See Butler*, 2016 WL 1726018, at *6.

Second, IDREs do not "hold hearings or decide the issue[s] by the application of rules of law to ascertained facts." *Cirrus*, 772 F. App'x at 601. While courts have applied the litigation privilege to communications in both administrative proceedings and contractual arbitration, they "have focused less on what type of proceeding is

actually held and more on the authority of the body." *Maheshwari v. Vista Hosp. Sys., Inc.*, No. E031768, 2003 WL 22079563, at *15 (Cal. Ct. App. Sept. 9, 2003); *see also Picton*, 50 Cal. App. 4th at 738 (committee was empowered to "hold hearings" and to assess whether allegations amounted to "'Probable cause' [a]s defined according to a legal standard"); *GeoData Sys. Mgmt., Inc. v. Am. Pac. Plastic Fabricators, Inc.*, No. CV154125VAPJEMX, 2016 WL 11756835, at *19 (C.D. Cal. Oct. 19, 2016) (Trademark Trial and Appeal Board had authority to hold hearings and interpret the law). Because IDREs do not have authority to hold a hearing on IDR eligibility or pricing determinations, or to interpret or apply legal principles, they do not constitute official proceedings. *See Butler*, 2016 WL 1726018, at *6 (statute did not authorize "the County Surveyor or Deputy Surveyor to hold hearings"); *Pettus v. Cole*, 49 Cal. App. 4th 402, 437 (1996), *as modified on denial of reh'g* (Oct. 15, 1996) (rejecting application of the litigation privilege to a proceeding that did not involve a hearing).

Third, cases applying the litigation privilege to administrative or arbitral proceedings have done so where the procedures were "functionally equivalent to court proceedings." *Moore v. Conliffe*, 7 Cal. 4th 634, 645 (1994); *see also Rasidescu v. Midland Credit Mgmt., Inc.*, 496 F. Supp. 2d 1155, 1161 (S.D. Cal. 2007) (arbitration held under National Arbitration Forum rules, where "[b]oth the Plaintiff and Defendant submitted evidence and information to the arbitrator," in the course of a "full hearing"); *Nickoloff v. Wolpoff & Abramson, L.L.P.*, 511 F. Supp. 2d 1043, 1045 (C.D. Cal. 2007) (arbitration held pursuant to National Arbitration Forum "National Arbitration Code of Procedure"); *DotConnectAfrica Tr. v. Internet Corp. for Assigned Names & Numbers*, 68 Cal. App. 5th 1141, 1158–59 (2021) (AAA arbitration involved "discovery, briefing, and the oral and written presentation of testimony . . . The panel rendered a lengthy written decision that recited the parties' contentions, examined the evidence, and reasoned its way to legalistic conclusions on the basis of proofs and arguments. This setting was quasi-judicial.").

Regardless of whether it is sometimes referred to as "arbitration," IDR is not arbitration as that term is commonly understood. *See Mod. Orthopaedics*, 2025 WL 3063648, at *5 ("[T]he IDR process is not an arbitration . . . ."). It lacks "indicia of administrative proceedings undertaken in a judicial capacity[,] includ[ing] a hearing before an impartial decision maker; testimony given under oath or affirmation; a party's ability to subpoena, call, examine, and cross-examine witnesses, to introduce documentary evidence, and to make oral and written argument; the taking of a record of the proceeding; and a written statement of reasons for the decision." *Murray v. Alaska Airlines, Inc.*, 50 Cal. 4th 860, 881 (2010) (cleaned up). IDR also does not implicate "[t]he principal purpose of the privilege," which "is to afford litigants and witnesses the utmost freedom of access to the courts." *Silberg v. Anderson*, 50 Cal. 3d 205, 213 (1990). Because IDR is not a quasi-judicial proceeding, the litigation privilege does not apply.

Finally, regardless of whether the litigation privilege could apply to IDR, it would not apply to Anthem's UCL claims based on violations of federal laws. It is "well settled that the California litigation privilege does not apply to federal causes of action." *Oei v. N. Star Cap. Acquisitions, LLC*, 486 F. Supp. 2d 1089, 1098 (C.D. Cal. 2006). And "[c]ourts routinely hold that when the underlying unlawful conduct is not protected by the litigation privilege, the corresponding UCL claim is also not protected by the litigation privilege." *Experian Info. Sols. Inc. v. Stein Saks, PLLC*, No. 8:24-CV-01186-FWS-JDE, 2024 WL 5261159, at *6 (C.D. Cal. Nov. 19, 2024) (collecting cases). Here, Anthem's UCL claim is predicated on, among other things, violations of 18 U.S.C. § 1347, 29 U.S.C. § 1185e and 42 U.S.C. § 300gg-111, and 18 U.S.C. § 1962(c) and (d). AC at ¶ 343. Since the UCL "claim is predicated in part upon alleged violations of federal statutes as to which the litigation privilege does not apply, Defendants' Motion to dismiss such claim . . . should be denied." *Lauter v. Anoufrieva*, No. CV 07-6811 JVS JC, 2010 WL 3504745, at *13 (C.D. Cal. July 14, 2010), *report and recommendation adopted as modified*, No. CV 07-6811JVS

JC, 2010 WL 3504732 (C.D. Cal. Aug. 31, 2010).

D. Anthem Pleads Common Law Fraud (Counts V & VI) and Negligent Misrepresentation (Counts VII & VIII).

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

In addition to the traditional 9(b) argument addressed *supra*, HaloMD argues that Anthem has failed to "plead particularized facts showing HaloMD knew (or should have known) at the moment of each attestation that any dispute was ineligible[.]" HaloMD MTS 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 expressly alleges that Defendants knew that their misrepresentations were false and sets forth facts demonstrating how and why they knew disputes were ineligible, including both: (1) specific communications from Anthem advising them that disputes were ineligible (*e.g.*, AC, ¶¶ 171, 176, 181, 187),

and (2) readily accessible information confirming disputes were ineligible. *See, e.g.*, *id.* at ¶ 287 (Defendants had access to, among others, "the 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.

Defendants also contend that their attestations of IDR eligibility are incapable of supporting a fraud claim because they express only "a belief regarding eligibility, not a factual assertion that can support a misrepresentation claim." HaloMD MTS 12. This argument fails for at least two reasons. First, the AC alleges that Defendants make purely factual assertions in their submissions, "such as the type of health plan at issue, negotiation dates, and supporting documentation, to bypass mandatory regulatory safeguards intended to filter out such ineligible disputes." AC, ¶ 4. Second, the AC alleges that Defendants "knowingly submit false and fraudulent attestations of eligibility for services and disputes that they know are ineligible for the IDR process." *E.g.*, AC, ¶ 3. A knowledge qualifier does not immunize Defendants' knowingly false attestations. *See, e.g.*, *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 501 (9th Cir. 1992) (noting, in context of securities fraud, that "[a] statement of belief may be actionable to the extent that one of three implied factual assertions is inaccurate: (1) that the statement is genuinely believed, (2) that there is a reasonable basis for that belief, and (3) that the speaker is not aware of any undisclosed facts tending to seriously undermine the accuracy of the statement[.]") (internal citation and punctuation omitted).

Finally, Defendants argue that Anthem has failed to adequately plead reliance because Anthem itself often knew the Defendants' statements were false and even objected to them. In most circumstances, plaintiffs must rely directly on a defendant's misrepresentation to state a claim, because "reliance is the causal mechanism of fraud." *In re Tobacco II Cases*, 46 Cal. 4th 298, 326 (2009). But courts have recognized an exception to this rule where, as here, the defendant intentionally

induces reliance by an intermediary who has the legal authority to compel the plaintiff's financial loss.

This principle is applied, for example, to permit plaintiffs to assert fraud where a defendant deceives a bank into paying under a letter of credit issued by the plaintiff. *See, e.g.*, *ADA-ES, Inc. v. Big Rivers Elec. Corp.*, 465 F. Supp. 3d 703, 711 (W.D. Ky. 2020) (although bank issued payment in reliance on defendant's misrepresentation, plaintiff was "obligated to repay the Bank, suffer[ing] injury that was the proximate result of [defendant's]representation"); *Holmberg v. Morrisette*, 800 F.2d 205, 211 (8th Cir. 1986) ("The bank accepted the falsified documents that defendants presented and in reliance on them paid defendants $125,000. Accordingly, Holmberg, who then was obligated to repay the bank, suffered injury that was the proximate result of defendants' intentional misrepresentations."). In *Pubali Bank v. City Nat. Bank*, the Ninth Circuit affirmed summary judgment in favor of a plaintiff on a fraud claim under these precise circumstances while applying California law. 777 F.2d 1340 (9th Cir. 1985) (defendants held "liable for damages suffered by [plaintiff] when Manufacturers Hanover Bank honored the letters of credit and offset [plaintiff's] account in those amounts").

Defendants cite a single authority for the proposition that California law does not permit a misrepresentation claim where a plaintiff "does not allege that he himself relied on [defendant's] purportedly false statements…, but instead that he was injured by the [third party's] reliance." *Wescott v. Daniel*, No. 21-CV-10011-JCS, 2022 WL 1105079, at *5 (N.D. Cal. Apr. 13, 2022).[11] But in *Westcott*, the *pro se* plaintiff brought misrepresentation claims alleging that (1) he filed a claim for wages against his employer with the labor department; (2) the employer falsely represented that he never worked for them; and (3) as a result, the labor department issued an *unspecified*

[11] Defendants' other cited authorities do not consider (much less reject) the potential for claims premised on the reliance of a third party. *Beckwith v. Dahl*, 205 Cal. App. 4th 1039, 1066 (2012) (plaintiff directly relied on false statement that defendant would prepare trust documents); *Berry v. Frazier*, 90 Cal. App. 5th 1258, 1270 (2023) (plaintiff relied directly on veterinarian's misrepresentations by providing consent to procedure).

ruling against him. *Id*. at **1-2, n.3 ("Wescott does not specifically allege the outcome of his claim before the Labor Commissioner."). Thus, *Wescott* was not a case in which the defendant's misrepresentation to a third party caused the plaintiff to incur an immediate out-of-pocket financial loss.[12]

Here, in contrast, Anthem was *immediately* required to pay administrative IDR fees the moment that Defendants fraudulently initiated each proceeding. AC, ¶ 79. And as a result of the IDR proceedings themselves, Anthem was ordered to pay further fees and awards. *E.g. id*. ¶¶ 166, 222. "This is not a case of a person being held accountable for an act he never intended to commit, or becoming liable to another whom he never intended to defraud." *See Fla. Rock & Tank Lines, Inc. v. Moore*, 258 Ga. 106, 107 (1988) (affirming fraud verdict where defendant's misrepresentation to third party caused plaintiff's financial loss). Defendants deliberately sought to induce reliance by HHS and the IDREs for the sole purpose of defrauding Anthem. Anthem was clearly the intended victim of these misrepresentations and should be permitted to pursue its misrepresentation claims. *See Pubali Bank*, 777 F.2d 1340.

E. Anthem Pleads Violations of the UCL (Counts IX & X).

As detailed in the AC, Defendants' NSA Schemes violate the UCL's prohibition on "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. "'Because Business & Professions Code § 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.'" *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 865 (9th Cir. 2018) (quoting *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal.4th 163 (1999)). Anthem's allegations state claims for (1) unlawful and

[12]Nor was this theory of liability at issue in cases rejecting "the so-called 'fraud-on-the-market' doctrine [which] obviates the need to plead and prove actual reliance in cases where material misrepresentations are alleged to have affected the market price of stock." *Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1088 (1993); *see also Russell v. Maman*, No. 18-CV-06691-RS, 2020 WL 10964919, at *4 (N.D. Cal. Apr. 10, 2020) (relying on *Mirkin* to reject third party reliance in case alleging defendant caused termination of a contract for bodyguard services).

(2) unfair business practices.

1. Anthem Pleads Unlawful Business Practices.

The unlawful prong of the UCL "borrows violations of other laws and treats [them] . . . as unlawful practices independently actionable under section 17200 et seq. and subject to the distinct remedies provided thereunder." *Farmers Ins. Exch. v. Superior Court*, 2 Cal.4th 377, 383 (1992) (internal quotation omitted). Anthem thus states claims under the unlawful prong based on Defendants' violations of (1) the Federal Health Care Fraud Statute, 18 U.S.C. § 1347; (2) the NSA, 29 U.S.C. § 1185(e) and 42 U.S.C. § 300gg-111, and its implementing regulations, 29 C.F.R. § 2590.716-8 and 45 C.F.R. § 149.510; (3) RICO, 18 U.S.C. § 1962(c) and (d); and (4) California Penal Code § 550.

Defendants' arguments addressing the requirements of Rule 9(b), the *Noerr-Pennington* doctrine, and the California litigation privilege fail for the reasons already discussed. Defendants' challenges to Anthem's pleading of each specific statutory violation also lack merit.

18 U.S.C. § 1347: Anthem pleads a violation of 18 U.S.C. § 1347 by alleging that Defendants engaged in (1) knowing and willful, (2) execution of a scheme, (3) related to the delivery of or payment for health care benefits, items, or services, (4) for the purpose of obtaining (by false or fraudulent pretenses, representations, or promises) any of the money or property owned by or under the control of any health care benefit program. 18 U.S.C. § 1347(a).

In addition to arguments addressed above, Defendants contend that Anthem fails to plead how any violation of 18 U.S.C. § 1347 caused it a monetary loss. *See* HaloMD MTS at 15. But the AC alleges concrete financial harm (with demonstrative examples) in the form of Anthem incurring: (1) IDR and administrative fees for ineligible disputes, (2) the operational burden and expense to address Defendants' false scheme, and (3) the liability for fraudulently procured IDR awards. *See* AC, ¶¶ 79, 115, 118, 128. *Cf. Copelin v. Athene Annuity & Life Co.*, No. 2:25-CV-00832-

SB-JPR, 2025 WL 2551079, at *4 (C.D. Cal. July 31, 2025) (dismissing UCL claim where sole allegation of financial loss was "funds incurred litigating this case"). To the extent Defendants dispute causation, that argument fails for the reasons stated in Anthem's MTD Opposition at Section III.B.2, which is incorporated herein by reference.

The NSA: Anthem also pleads violations of the NSA as predicates for its UCL claim. AC, ¶¶ 343, 351. In addition to the arguments addressed *supra*, Defendants argue that this predicate fails because Anthem does not explain how submission of attestations violate the NSA. HaloMD MTS at 15. But Anthem adequately pleads that Defendants violated the NSA and its implement regulations by submitting false "attestation[s] that the items and services under dispute are qualified IDR items or services." 45 C.F.R. § 149.510.

18 U.S.C.§ 1962(c), (d): In attacking Anthem's RICO claims, Defendants simply incorporate by reference arguments from their Motions to Dismiss. These arguments fail for the reasons stated in Anthem's MTD Opposition at Section III, which is incorporated herein by reference.

California Penal Code § 550: California law prohibits a wide range of activities associated with using false or fraudulent claims or statements to obtain insurance payments. Defendants argue that Anthem fails to plead a violation of Cal. Penal Code § 550 because the "[t]he initiation of an IDR proceeding is not the presentation of a false claim to an insurer." HaloMD MTS 15. But Cal. Penal Code § 550(b)(1) expressly prohibits "[p]resent[ing] or caus[ing] to be presented any written or oral statement as part of, or in support of . . . a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact." The AC pleads precisely such a violation through Defendants' submission of hundreds of false statements in support of their claims in IDR and their false statements to Anthem during the Open Negotiations process that the disputes are subject to the NSA and eligible for IDR.

Defendants also seek to invoke the California litigation privilege because California Penal Code section 550 is a state law. Sound MTS 24. But, in addition to the arguments in Section III.C *supra*, California courts recognize an exception to the litigation privilege where, as here, its application would produce conflicts between the privilege and other coequal state laws. *See, e.g.*, *People v. Persolve, LLC.*, 218 Cal. App. 4th 1267, 1274, 1275–77 (2013) (holding that an action under the UCL based on violations of Rosenthal Act and Fair Debt Collection Practices Act is not barred by the litigation privilege).

The decision in *People ex rel. Alzayat v. Hebb* is instructive. 18 Cal. App. 5th 801 (2017). In that case, plaintiff filed a qui tam action against his employer alleging violations of Penal Code Section 550, a predicate offense under the Insurance Fraud Prevention Act. *See id*. at 807, 809–10. The defendant sought to invoke the litigation privilege because the fraud arose in the context of a workers compensation proceeding. *Id*. at 819. The court rejected the privilege, however, reasoning that "[t]he IFPA is a more specific statute than the litigation privilege, and application of the litigation privilege to claims under the IFPA—which in many cases will be based on communications that are otherwise privileged under Civil Code section 47(b)—would in large measure nullify the Act." 18 Cal. App. 5th at 808. The same reasoning applies here. "[T]he privilege is implicated in all judicial and quasi-judicial proceedings and [Cal. Penal Code section 550] is implicated in only the small subset of those proceedings that involve" insurance fraud. *See id*. at 823 (internal quotation omitted); *id. at* 827. The privilege does not apply.

2. Anthem Pleads an Unfair Business Practice.

Defendants incorrectly argue that Anthem fails to allege an unfair business practice because Anthem is neither Defendants' competitor nor a consumer. *See* Sound MTS at 26–27. But as the payor for the underlying medical services, Anthem is a consumer vis-à-vis Sound Providers and the LaRoque Family Providers. As the court in *Staley v. Gilead Scis., Inc.* explained:

> [A] third party payor . . . falls squarely within the ordinary definition of 'consumer,' which means 'one that utilizes economic goods.' In this case, [the payor] uses economic goods, namely drugs . . . to provide prescription reimbursements for treatment of its members and beneficiaries . . . Under this ordinary definition, it matters not that [the payor] itself did not physically consume or use the drug[.]

589 F. Supp. 3d 1132, 1137–38 (N.D. Cal. 2022) (citation omitted) (applying Indiana law).

Moreover, "[a]ny party who has suffered injury in fact and has lost money or property as a result of unfair competition has standing to bring a claim under the UCL." *Nutrishare, Inc. v. Connecticut General Life Ins. Co.*, No. 2:13-CV-02378-JAM-AC, 2014 WL 1028351, at *3 (E.D. Cal. Mar. 14, 2014) (permitting UCL claims by insurer against providers); *cf. Republican Nat'l Comm. v. Google LLC*, 742 F. Supp. 3d 1099, 1118 (E.D. Cal. 2024) (dismissing UCL claim alleging that Google sent political party fundraising emails to users' spam folders where political party was stranger to relationship between Google and its users). Anthem has directly lost money as a result of Defendants' conduct and need not rely on any "downstream harm" to its members. Sound MTS 27.

In addition, Anthem does not need to allege an "incipient violation of antitrust law." Sound MTS 27. While that is one way to establish a UCL violation, Anthem may also show that "the challenged conduct is tethered to any underlying constitutional, statutory or regulatory provision[.]" *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1214 (9th Cir. 2020); *see also Fernandez v. Progressive Mgmt. Sys.*, No. 3:21-cv-00841-BEN-WVG, 2022 WL 2541272, at *6 (S.D. Cal. July 7, 2022) (denying motion to dismiss UCL claim because it alleged defendant "engaged in misrepresentations to collect legally impermissible debts, which violates California's

public policy against unfair debt collection under the Rosenthal Act"). As discussed above, Anthem pleads misconduct that violates both the provisions and underlying policy of multiple statutes prohibiting Defendants' NSA Scheme.

3. Anthem's UCL Claims Are Not Subject to the UCL's Safe Harbor Provision.

Defendants argue that Anthem's UCL claims fail because their NSA Schemes fall within a "safe harbor" that is impervious to the UCL. HaloMD MTS at 14. But the Safe Harbor doctrine only applies if a statute expressly "'bar[s]' the [plaintiff's] action or clearly permit[s] the [defendant's] conduct." *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1164 (9th Cir. 2012) (finding challenged disclosures were specifically required under federal law). Here, the NSA does not bar judicial review of Anthem's claims for the reasons stated in Section II of Anthem's MTD Opposition, which is incorporated here by reference. And nothing in the NSA requires or permits false certifications to initiate IDR.

IV. Defendants Cannot Achieve Prevailing Party Status.

For the reasons stated in Section III *supra*, Defendants' attacks on the pleadings fail on the merits. But regardless of whether the Court grants Defendants' motions with respect to any state law claims, Defendants cannot be deemed a prevailing party if Anthem's federal law claims survive Defendants' motions to dismiss. In determining whether a defendant is truly a prevailing party for purposes of Cal. Civ. Proc. Code § 425.16(c)(1), "[t]he crucial question is one of practicality; did anything of substance (technical victories notwithstanding) change in the posture of the case and the claims being lodged against the defendant after it brought the special motion to strike than were in existence beforehand." *Brown v. Elec. Arts, Inc.*, 722 F. Supp. 2d 1148, 1155 (C.D. Cal. 2010). Here, if Anthem's federal claims survive, then "[t]he possible recovery against defendants did not change," "[t]he factual allegations which defendants had to defend did not change," "[t]he work involved in trying the case did not change," and thus "[t]he case was essentially the

same after the ruling on the special motion to strike as it was before." *Moran,* 135 Cal.App.4th at 956.

At the same time, if the Court were to dismiss Anthem's federal claims, it would not retain jurisdiction to award Defendants attorney's fees. *See, e.g.*, *Williams v. Kula*, No. 20-CV-1120 TWR (AHG), 2020 WL 7770915, at *8 (S.D. Cal. Dec. 29, 2020) ("Defendants 'cannot have it both ways,' claiming both that the Court lacks jurisdiction over them but also seeking an affirmative exercise of the Court's jurisdiction to obtain a fee award."); *Bhs L. LLP v. Worldex Indus. & Trading Co*., No. 25-CV-04471-SVK, 2025 WL 3754296, at *18 (N.D. Cal. Dec. 29, 2025) (finding federal court cannot grant anti-SLAPP attorney's fees where it lacks subject matter jurisdiction); *see also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.").

V. The California Anti-SLAPP Statute Cannot Apply in Federal Court.

Supreme Court precedent precludes the Ninth Circuit's approach to allowing anti-SLAPP statutes in federal court. *See Berk*, No. 24-440, at 8-9. Even before *Berk*, the Ninth Circuit was already poised to end the "misguided experiment of allowing California's anti-SLAPP statute to apply in federal court." *Gopher Media LLC v. Melone*, 154 F.4th 696, 709 (9th Cir. 2025) (Bress, J., joined by Collins, J., Lee, J., and Bumatay, J., concurring). *Berk* now renders that a foregone conclusion. While the Court has many reasons to deny Defendants' motions to strike, it may alternatively deny Defendants' motions by following Supreme Court precedent and holding that California's anti-SLAPP statute cannot apply in federal court.

Federal courts adjudicating state law claims "apply state substantive law and federal procedural law." *Hanna v. Plumer*, 380 U.S. 460, 465 (1965). To distinguish between substantive and procedural rules, "[t]he test is not whether the rule affects a litigant's substantive rights; most procedural rules do." *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (2010) (citation omitted). Rather,

procedural rules govern "the manner and the means" by which litigants' rights are "enforced." *See id.* (citation and internal quotation omitted). If a valid rule in the Federal Rules of Civil Procedure "attempts to answer the same question" as the state law or rule, federal courts will apply the Federal Rules and disregard the state law. *See id.* at 399; *accord Berk*, No. 24-440, at 3-4.

For example, in *Berk*, the Supreme Court held that federal courts could not apply a state law requiring medical malpractice plaintiffs to include an affidavit in support of the complaint; that state law was "at odds with Rule 8 because it demands more" than what the Federal Rules of Civil Procedure require. No. 24-440, at 6. As another example, in *Shady Grove*, the Supreme Court held that federal courts could not apply a state statute prohibiting class actions seeking penalties because it set certain "preconditions for maintaining a class action" that differed from Rule 23 of the Federal Rules of Civil Procedure. *See* 559 U.S. at 399-400. As a third example, Circuit Courts of Appeals throughout the country have held that state anti-SLAPP statutes do not apply in federal court because "Federal Rules of Civil Procedure 12 and 56 'answer the same question' about the circumstances under which a court must dismiss a case before trial." *Abbas v. Foreign Pol'y Grp., LLC*, 783 F.3d 1328, 1333-34 (D.C. Cir. 2015) (quoting *Shady Grove Orthopedic Assocs.*, 559 U.S. at 407); *see also, e.g.*, *La Liberte v. Reid*, 966 F.3d 79, 87-88 (2d Cir. 2020); *Klocke v. Watson*, 936 F.3d 240, 242 (5th Cir. 2019); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1347 (11th Cir. 2018); *Los Lobos Renewable Power, LLC v. Americulture, Inc.*, 885 F.3d 659, 673 (10th Cir. 2018).

The California anti-SLAPP statute exemplifies how state anti-SLAPP statutes are "at odds" with the Federal Rules of Civil Procedure. *See Berk*, No. 24-440, at 6. The "anti-SLAPP statute is a procedural device to screen out meritless claims." *Kibler*, 39 Cal.4th at 202 (distinguishing the "procedural" anti-SLAPP statute from the "substantive" official-proceedings provision in Cal. Civ. Pro. Code § 47). Per the anti-SLAPP statute, litigants in California state court may file "a special motion to

strike" a cause of action "arising from any act of that person in furtherance of the person's right of petition or free speech" under the U.S. or California Constitutions "in connection with a public issue." Cal. Civ. Pro. Code § 425.16(b)(1). The anti-SLAPP statute features several unique procedural mechanisms, including, among others, that: (1) the defendant must file the special motion to strike within 60 days; (2) all discovery proceedings shall be stayed upon the filing of such a motion; (3) the plaintiff must establish a "probability" of success after the defendant meets its prima facie case; and (4) an order granting or denying a special motion to strike shall be appealable. *Id.* § 425.16(b)(1), (f), (g), (i). These "procedure[s]" are designed to "weed[ ] out, at an early stage, meritless claims arising from protected activity." *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 4 Cal.5th 637, 642 (2018) (citation and quotes omitted) (emphasis removed).

Indeed, over the last quarter century, the Ninth Circuit has explained the many ways the California anti-SLAPP statute is "at odds" with the Federal Rules of Civil Procedure. *See Berk*, No. 24-440, at 6. For example, the anti-SLAPP statute's automatic stay of discovery conflicts with Rule 56, which "ensures that adequate discovery will occur before summary judgment is considered." *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001). Relatedly, for motions to strike sounding in Rule 56, the statute's requirement that defendants file the motion within 60 days "directly collide[s] with the more permissive timeline Rule 56 provides for the filing of a motion for summary judgment." *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016).

When a defendant brings a motion to strike as a pleadings challenge, the court also found that "granting a defendant's anti-SLAPP motion to strike a plaintiff's initial complaint without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P. 15(a)'s policy favoring liberal amendment." *Verizon Del., Inc. v. Covad Commc'ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004). When a motion to strike brings a legal challenge on the pleadings, the statute's "probability"

requirement is incompatible with Rules 8 and 12, which only require a plaintiff to allege facts that state a plausible claim to relief. *See Planned Parenthood Fed. of Am., Inc.*, 890 F.3d at 833-34. And the statute's grant of a right to immediately appeal a decision on a motion to strike does not satisfy federal requirements for an appeal; as, in federal court, "a party may not take an interlocutory appeal as of right from" an anti-SLAPP decision. *See Gopher Media*, 154 F.4th at 703.

Federal courts refuse to apply state procedural laws that—like the California anti-SLAPP statute—are "at odds" with the Federal Rules of Civil Procedure. *See Berk*, No. 24-440, at 1, 6; *Shady Grove Orthopedic Assocs.*, 559 U.S. at 399-402; *see also, e.g.*, *La Liberte*, 966 F.3d at 87-88; *Klocke*, 936 F.3d at 242; *Carbone*, 910 F.3d at 1347; *Los Lobos Renewable Power*, 885 F.3d at 673; *Abbas*, 783 F.3d at 1333-34. However, that is not what the Ninth Circuit has done. Instead, following precedent that pre-dates *Berk* and *Shady Grove*, the Ninth Circuit has "spent years jerry-rigging" the anti-SLAPP statute into a "contorted version" that "strip[s] away every major procedural aspect of the statute geared toward the early termination of claims." *Gopher Media*, 154 F.4th at 709, 716 (Bress, J., concurring). Specifically, the Ninth Circuit "ha[s]—out of necessity to avoid conflict with federal procedural rules—completely reformed the state anti-SLAPP legal standards, the state anti-SLAPP discovery processes (or lack thereof), and the state anti-SLAPP rules for interlocutory appeals[.]" *Id.* at 716. "No authority permits [the Ninth Circuit] to blend these two bodies of law as [it has], an endeavor that has bedeviled federal practice and left in its wake a version of the anti-SLAPP statute that bears no resemblance to the real thing." *Id.* at 721.

Before *Berk*, the Ninth Circuit was already poised to overturn its precedent of allowing anti-SLAPP statutes in federal court. *E.g.*, *Gopher Media*, 154 F.4th at 709, 716 (Bress, J., joined by Collins, J., Lee, J., and Bumatay, J., concurring) ("We should have held that California's anti-SLAPP statute does not apply in federal court. When the issue presents itself again, which it surely will, I hope we will end our confusing

efforts to meld federal and state procedural law."); *Martinez v. ZoomInfo Techs., Inc.*, 82 F.4th 785, 794-95 (9th Cir. 2023) (McKeown, J., concurring) ("Our jurisprudence on anti-SLAPP statutes places us in the minority among our sister courts," and "[w]e have turned a blind eye to the incongruity of this practice—with *Erie* and with common sense—for too long."); *Travelers Casualty Ins. Co. of Am. V. Hirsh*, 831 F.3d 1179, 1182 (9th Cir. 2016) (Kozinski, J., joined by Gould, J., concurring) ("These interloping state procedures have no place in federal court."); *id.* at 1186 (Gould, J., concurring) ("[A]n anti-SLAPP motion has no proper place in federal court in light of the Federal Rules of Civil Procedure[.]"); *Maekaeff v. Trump Univ., LLC*, 736 F.3d 1180, 1189-90 (9th Cir. 2013) (Watford, J., joined by Kozinski, J., Paez, J., and Bea, J., dissenting) ("California's anti-SLAPP statute creates the same conflicts with the Federal Rules that animated the Supreme Court's ruling in *Shady Grove* . . . [t]hat intervening decision should have led us to revisit—and reverse—our precedent permitting application of state anti-SLAPP statutes in federal court.").

Now, the Supreme Court has specifically rejected the Ninth Circuit's approach. In *Berk*, the defendants argued that the Supreme Court should "rewrite [state] law" containing the affidavit requirement for medical malpractice complaints to avoid a conflict with the Federal Rules of Civil Procedure. No. 24-440, at 8. The Court rejected the defendant's proposal. *See id.* at 8-9. The Court noted that "[a]fter defendants' edits, the [state] law is no longer a pleading requirement that serves as a gatekeeping function; it is a free-floating evidentiary requirement that can service as the basis for early dismissal." *Id.* at 8. The fact that "defendants cannot fit the affidavit requirement into the Federal Rules illustrates that is has no place there." *Id.* at 9.

The same is true here. The Court cannot "rewrite [California] law" to avoid conflict with the Federal Rules of Civil Procedure. *Berk*, No. 24-440, at 8-9. After the Ninth Circuit's edits, the anti-SLAPP statute is no longer "a procedural device to screen out meritless claims." *Kibler*, 39 Cal.4th at 202; *see Berk*, No. 24-440. Instead, the Ninth Circuit left federal courts to apply a "contorted version" that "strip[s] away

every major procedural aspect of the statute geared toward the early termination of claims" and "bears no resemblance to the real thing." *Gopher Media*, 154 F.4th at 709, 716, 721 (Bress, J., concurring). "That defendants cannot fit the [anti-SLAPP] requirement[s] into the Federal Rules illustrates that it has no place there." *Berk*, No. 24-440, at 9.

Consistent with *Berk*, this Court should hold that the California anti-SLAPP statute does not apply in federal court.

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 10,729 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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