MCDERMOTT WILL & SCHULTE LLP
TALA JAYADEVAN (SBN 288121)
tjayadevan@mcdermottlaw.com
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206
Telephone: (310) 277-4110
Facsimile: (310) 277-4730

LAURA MCLANE (appearing *pro hac vice*)
lmclane@mcdermottlaw.com
MATTHEW L. KNOWLES (appearing *pro hac vice*)
mknowles@mcdermottlaw.com
CONNOR S. ROMM (appearing *pro hac vice*)
cromm@mcdermottlaw.com
200 Clarendon Street
Boston, MA 02116
Telephone: (617) 535-3885

Attorneys for Defendants
Sound Physicians Emergency Medicine of Southern California, P.C.; and Sound Physicians Anesthesiology of California, P.C.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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 Neurophysiology, P.C.; iNeurology, P.C.; N Express, P.C.; North American Neurological Associates, P.C.; Sound Physicians Emergency Medicine of Southern California, P.C.; and Sound Physicians Anesthesiology of California, P.C.,

Defendants.

CASE NO. 8:25-cv-01467-KES

REPLY IN SUPPORT OF SOUND PHYSICIANS' SPECIAL MOTION TO STRIKE

DATE: March 10, 2026
TIME: 10:00 a.m.
COURTROOM: 6D
JUDGE: Karen E. Scott

AMENDED COMPLAINT FILED: 10/17/2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Anthem's[1] opposition makes one thing clear: Anthem is using this litigation to try to punish Sound Physicians for filing and prevailing in NSA arbitrations, and to deter Sound Physicians from participating in this government-administered arbitration process in the future. In short, this case is a strategic lawsuit against public participation. It is an archetype of the concerns that led California lawmakers to enact the anti-SLAPP law.

All of Anthem's technical arguments against applying the anti-SLAPP law here fail. There can be no dispute that Sound Physicians petitioned the government to initiate IDR, and that—in the words from Anthem's complaint—a government agency "administers the IDR initiation process." AC ¶ 67. The arbitrators then exercised delegated authority under the procedural rules the government set out, and subject to the government's review and supervision. IDR thus easily meets the definition of "official proceeding" under the anti-SLAPP statute. Because the law is against it, Anthem must misconstrue the cases it cites, including on page 17 of its brief where it cites and quotes (without explanation) from a *dissent* by a justice of the California Supreme Court as if the language came from the court's opinion.

And Sound Physicians' motion was timely. Anthem argues to the contrary, but

[1] This reply uses the same defined terms as Sound Physicians' opening brief. "Opp." citations refer to Anthem's opposition brief (Docket No. 92). "OB" citations refer to Sound Physician's opening motion to strike brief (Docket No. 68-1).

does not tell the Court the full story. Because of serious factual errors in its first complaint, Anthem was forced to amend its complaint. To allow it time to do so, the parties stipulated that because the "Plaintiffs intend to amend the Original Complaint," "the Parties agree that Defendants need not respond to the Original Complaint," and that "once the Amended Complaint is filed, Defendants will have twenty-eight days to respond." Docket No. 47. The Court adopted this stipulation as an order, and expressly stayed the deadline to respond to the original complaint. Docket No. 48. In light of its own stipulation, Anthem is estopped from raising this objection now.

Accordingly, the burden shifts to Anthem to show that it is likely to prevail on its claims, which it cannot do. Reflecting the weakness of its argument on this prong, Anthem now argues that even if Sound Physicians prevails and these claims are dismissed, it is not entitled to attorney fees because the state-law claims are unimportant and would make no difference in the case. That is an astonishing admission, and calls into question why the claims were filed. But in any event, Anthem is mistaken on this issue, and the cases it cites do not support its argument.

Finally, Anthem argues that a recent Supreme Court decision means that it escapes sanction under anti-SLAPP. Not so. Unlike the Delaware law at issue there, the Ninth Circuit forecast this issue and has carefully adjusted the application of California's anti-SLAPP law so that it does not contravene any federal procedural rule. Sound Physicians is seeking dismissal consistent with the Rule 12(b)(6) standard and an award of attorney fees. Neither of these things contradict any federal procedural

rule. Despite Anthem's request, this Court cannot overrule binding Ninth Circuit precedent on this point.

Anthem invoked California law in a strategic effort to chill participation in the IDR process that Congress established. Thus, under controlling law, the state-law claims must be dismissed and Anthem must make Sound Physicians whole for the attorney fees it has incurred.

II. ARGUMENT

A. The Motion was timely per Anthem's stipulation and the Court's order.

Anthem argues that the anti-SLAPP motion is untimely because it was not filed within 60 days of the original complaint. Opp. 11-12. Anthem ignores that it stipulated that "for efficiency, the Parties agree that Defendants need not respond to the Original Complaint" and that the Defendants would instead respond to the amended complaint once filed. Docket No. 47 at 1. And Anthem also ignores that the Court has already ordered that the Defendants' deadline to respond to the original complaint "is stayed," a stay that never lifted. Docket No. 48. Anthem did not bring these facts to the Court's attention in presenting its argument.

In any event, this argument is estopped and waived, and is otherwise contrary to law. When parties agree to modify filing deadlines, including those for anti-SLAPP motions, in federal court, those deadlines control. *See Gbeintor v. Demandbase, Inc.*, 2023 WL 11983757, at *1 (N.D. Cal. Feb. 17, 2023); FED. R. CIV. P. 6(b). For example,

in *Gbeintor v. Demandbase, Inc.*, the court held that a stipulation extended the 60-day timeline. 2023 WL 11983757, at *1. There, plaintiffs filed their original complaint on December 8, 2021. Complaint, *Gbeintor*, No. 21-cv-09470 (N.D. Cal. Dec. 8, 2021). Plaintiffs subsequently informed defendants of their intent to file an amended complaint. 2023 WL 11983757, at *1. The parties stipulated a filing schedule in which defendants' response would be filed by May 13, 2022. *Id.* Defendants filed an anti-SLAPP motion on May 13, 2022. *Id.* The court held that "[p]ursuant to the order granting the parties stipulation, defendants' motion to strike plaintiffs first amended complaint under California's anti-SLAPP statute is timely." *Id.* Here, like in *Gbeintor*, the anti-SLAPP motion is timely for the same reasons.

The stipulation, made under the federal rules and entered as an order by a federal court, controls over any contrary state procedural rule. The Ninth Circuit noted in *Sarver v. Chartier* that the anti-SLAPP statute's timing controls conflict with certain rules of federal civil procedure. 813 F.3d 891, 900 (9th Cir. 2016). As a salve, the Ninth Circuit "refer[s] instead to [its] own rules of procedure" regarding the timing of filing an anti-SLAPP motion. *Id.* This aligns with the Supreme Court's decision in *Berk v. Choy*, which recognizes that a federal court applies federal procedural rules "when a Federal Rule of Civil Procedure is on point." No. 24-440, at 3 (Jan. 20, 2026) ("*Berk*"). This means that the Court's order staying the deadline controls.

And *even if* this Court found that the deadline was not extended, courts may accept anti-SLAPP motions later in its discretion. Cal. Civ. Proc. Code § 425.16(f).

"In determining whether to permit a late motion, the most important consideration is whether the filing advances the anti-SLAPP statute's purpose of examining the merits of covered lawsuits in the early stages of the proceedings." *San Diegans for Open Gov. v. Har Constr., Inc.*, 192 Cal. Rptr. 3d 559, 569 (Cal. Ct. App. 2015). The Court should allow the anti-SLAPP motion because it comports with the anti-SLAPP statute's policy. The filing advances the law's purpose of dismissing claims early in the litigation because the anti-SLAPP motion was filed at the pleadings stage as the Defendants' first response to plaintiff's operative complaint. And Anthem's express stipulation on this point should certainly factor into the Court's application of its discretion in this regard, even if the plain language of the order did not control (which it should).

The facts here stand in stark contrast to cases where courts have refused to accept later-filed motions. *See Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 413 P.3d 650, 655 (Cal. 2018) (affirming denial of late filing where two years of litigation had occurred before the defendant brought the anti-SLAPP motion); *Gopher Media LLC v. Melone*, 2024 WL 5442826, at *17 (S.D. Cal. Apr. 17, 2024), *appeal dismissed and remanded*, 154 F.4th 696 (9th Cir. 2025) (finding that there was "not good cause" to allow the anti-SLAPP motion where plaintiffs filed the motion after they had filed an answer to defendant's original counterclaim, second amended counterclaim, discovery was completed, and plaintiffs filed and the court granted its motion for judgment on the pleadings with leave to amend).

B. IDR arbitration is an official proceeding protected by anti-SLAPP.

The anti-SLAPP law protects "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." Cal. Civ. Proc. Code § 425.16(e)(2); *Mission Beverage Co. v. Pabst Brewing Co.*, 223 Cal. Rptr. 3d 547, 559 (Cal. Ct. App. 2017) ("A party's *initiation* of such an official proceeding is certainly protected activity." (emphasis in original) (citation omitted)). Anthem argues that the government's role in administering IDR does not count because it is supposedly "ministerial." It also argues that IDR is not formal enough to be an official proceeding. These arguments fail under the plain text of the NSA and its regulations.

1. The government administers IDR, and arbitrators that CMS appoints conduct these official proceedings.

A review of the NSA and its regulations show that the Centers for Medicare and Medicaid Services' ("CMS") role is not merely ministerial. CMS designs, supervises, promulgates rules for, and otherwise oversees the process. 45 C.F.R. § 149.510; 42 U.S.C. § 300gg-111(c)(2), (4). The NSA directs government agencies to certify and provide a method for selection of IDREs. 42 U.S.C. § 300gg-111(c)(4). CMS even selects the IDRE for a particular case when the parties cannot agree on one from the list of IDREs that CMS has vetted and approved. 42 U.S.C. § 300gg-111(c)(4)(F)(ii). CMS also reviews IDREs performance and undertakes recertification processes every five years. 45 C.F.R. § 149.510(e)(4), (6). Even more, CMS administers an appeals

process if a party believes the IDRE made an error during IDR proceedings. *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties, Topic: Errors Identified After Dispute Closure*, CMS.GOV, available at https://perma.cc/4R68-ERN8 (accessed February 20, 2026).

Furthermore, the anti-SLAPP law does not require that the government entity itself be the one making determinations. California courts and federal courts applying the California anti-SLAPP statute have found that the statute applies when the government has delegated decision making authority to another entity, including a non-government arbitrator. In *Kibler v. Northern Inyo County Local Hospital District,* the court applied anti-SLAPP protection to non-governmental entities, like a hospital's peer review process. 138 P.3d 193, 199 (Cal. 2006); *see also Dorit v. Noe*, 263 Cal. Rptr. 3d 98, 104 (Cal. Ct. App. 2020) (applying anti-SLAPP to attorney fee arbitrations even though the "arbitrations take place before local bar associations, which are private organizations"). In *Dean v. Kaiser Foundation Health Plan, Inc.*, the court accepted that the anti-SLAPP statute applies to Uniform Domain-Name Dispute-Resolution Policy ("UDRP") arbitrations "before the ICANN panel because ICANN is a quasi-public organization to which the U.S. Department of Commerce ***has delegated authority to resolve disputes***." 562 F. Supp. 3d 928, 934 (C.D. Cal. 2022) (emphasis added).[2] Similarly, in *Fontani v. Wells Fargo Investments, LLC*, the court

[2] Anthem argues this issue was not contested in the case. Not so. The defendants presented strong evidence, and the plaintiff—in the face of this evidence—conceded

held that defendant's act of filing a form, called Form U-5, reporting the termination of one of its employees to the National Association of Securities Dealers ("NASD") constituted an official proceeding for purposes of the anti-SLAPP statute. 28 Cal. Rptr. 3d 833, 837-39 (Cal. Ct. App. 2005), *disapproved of on other grounds by Kibler*, 138 P.3d at 199 n.5. It reached its conclusion by reasoning that "[t]he NASD acts under the aegis of the Securities and Exchange Commission (SEC) and its authority to regulate the broker-dealer industry stems from the federal securities laws that delegate governmental power to organizations like the NASD and NYSE." *Id.* at 837 (citations omitted).

Here, like ICANN and the NASD, IDREs act with delegated authority to resolve disputes. Congress states that the IDRE shall "with respect to a determination for a qualified IDR item or service" select an offer taking into account certain considerations. 42 U.S.C. § 300gg-111(c)(5). Further, the NSA's implementing regulations define a certified IDRE as "an entity ***responsible for conducting determinations*** under" the federal IDR process. 45 C.F.R. § 149.510(a)(2)(iii) (emphasis added). Like the NASD in *Fontani*, IDREs authority "stems from the federal [No Surprises Act]" rather than some independent basis. *See Fontani*¸ 28 Cal. Rptr. 3d at 837; 42 U.S.C. § 300gg-111(c)(5). Finally, *Kibler* instructs that "official proceedings" include those involving non-governmental entities, like IDREs. *See*

---

at oral argument that the defendants were right. *Dean v. Kaiser Foundation Health Plan, Inc.*, 562 F. Supp. 3d 928, 934 (C.D. Cal. 2022).

Kibler, 138 P.3d at 199. These facts demonstrate the IDREs work with governmental delegated authority such that IDR proceedings are official proceedings under the anti-SLAPP statute.

Anthem relies on the California Court of Appeal's ruling in *Blackburn v. Brady* holding that bidding at a sheriff's auction did not amount to protected speech under the anti-SLAPP law, because bidding at an auction is a business transaction and the sheriff's role was ministerial. 10 Cal. Rptr. 3d 696, 701 (Cal. Ct. App. 2004). Here, CMS administers the IDR process by vetting, selecting, setting the rules for, supervising, and, where necessary, reversing the arbitrators' rulings, and the IDREs arbitrate disputes under delegated authority from Congress and CMS. Thus, there can be no serious dispute that IDR meets the definition of "official proceeding." And Anthem admits that "official proceedings" include "proceedings established by statute to address a particular type of dispute." Opp. 7-8 (quoting *Dorit*, 263 Cal. Rptr. 3d at 104). IDR proceedings fit squarely in this category.

2. Written findings of fact and hearings are not required to be "official proceedings."

Anthem also argues that because in its view IDR proceedings are not sufficiently formal, the anti-SLAPP law does not apply. This argument is easily resolved, as Anthem does not contest that arbitration (where established by statutory regime) is an official proceeding, Opp. 7-8, and at least two circuit courts of appeal have determined that IDR is arbitration. *See Guardian Flight L.L.C. v. Med. Evaluators of Tex. ASO,*

L.L.C., 140 F.4th 613, 622-23 (5th Cir. 2025); *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275-77 (5th Cir. 2025); *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1114-24 (11th Cir. 2025) ("*RAMS*"); *see infra* § II.C.2. Thus, Anthem's views about whether Congress should structure the process differently do not change the analysis.

In any event, in making this argument, Anthem asks the Court to read a new requirement into the anti-SLAPP law: that to be protected, the proceedings "involve formal findings of fact or hearings." Opp. 7. But the law does not impose such a requirement, and the cases cited by Anthem do not support its own conclusion. In each case, the "official proceeding" analysis turned on whether the arbitration was established by a statute. *See Philipson & Simon v. Gulsvig*, 64 Cal. Rptr. 3d 504, 513 (Cal. Ct. App. 2007) (holding that it had "little trouble concluding that the initiation of a State Bar sponsored fee arbitration proceeding is likewise covered; after all, it is an official proceeding established by statute to address a particular type of dispute"); *Dorit*, 263 Cal. Rptr. 3d at 104 ("*Because the obligation to arbitrate here was at least partly statutory*…we agree [that the] MFAA arbitration was an official proceeding for anti-SLAPP purposes." (emphasis added)); *Mallard v. Progressive Choice Ins. Co.*, 115 Cal. Rptr. 3d 487, 495 (Cal. Ct. App. 2010) (holding that an uninsured motorist claim dispute was an official proceeding because the proceeding was "'required by statute' within the meaning of the anti-SLAPP law"); *Mission Beverage Co.*, 223 Cal. Rptr. 3d at 560 (holding that "section 25000.2's mandatory arbitration

undoubtedly qualifies as an official proceeding under" *Philipson & Simon v. Gulsvig*, *Mallard v. Progressive Choice Ins. Co.*, and *Kibler*).

None of these cases turn on how formal or informal the dispute resolution process is. And Anthem's rhetoric downplays the rules and processes that IDREs follow. Under 45 C.F.R. § 149.510(c)(4)(vi), IDREs issue a written decision with "an explanation of their determination, including what information the certified IDR entity determined demonstrated that the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service, including the weight given to the qualifying payment amount and any additional credible information." *Id*.

Anthem also relies on an unpublished and non-citable opinion in *Electronic Waveform Lab, Inc. v. EK Health Services, Inc.*, but this does not compel a different finding. This case involved "UR" which "is the process by which independent medical professionals review and approve, modify, delay or deny treatment prescriptions for injured workers." 2015 WL 576595, at *1 (Cal. Ct. App. Feb. 11, 2015). The Court held that this process was too far removed from any sort of legal dispute or proceeding, and too unlike either litigation or arbitration, to count as an "official proceeding." *Id.* at *7-8. It did not suggest (and certainly did not hold) that formal fact-finding or hearings are required to be an official proceeding. In contrast, as Anthem's complaint admits, IDR is a form of arbitration. AC ¶ 366 ("There is an actual case and controversy between Anthem and Defendants relating to the claims fraudulently submitted and arbitrated as part of the NSA's IDR process.").

At bottom, this analysis is not complicated despite Anthem's effort to obfuscate it. IDR proceedings are official proceedings because they are "established by statute to address a particular type of dispute." *Philipson*, 64 Cal. Rptr. 3d at 513; *see RAMS*, 160 F.4th at 1119. The NSA established the IDR process to resolve billing disputes that arise between insurers and providers regarding certain out-of-network services. 42 U.S.C. § 300gg-111(c)(1)(B). Under California precedent, that is an official proceeding.

C. Anthem has not carried its burden to show that its state-law claims are likely to succeed.

Because IDR is an official proceeding subject to the anti-SLAPP law, the burden shifts to Anthem to show that it is likely to succeed on its state-law claims. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,1110 (9th Cir. 2003). Anthem fails this burden.

1. Anthem's state-law claims are barred under the NSA's limit on judicial review.

A plaintiff facing an anti-SLAPP motion loses under the second prong if—as here—its complaint fails for lack of subject-matter jurisdiction. *Barry v. State Bar of Cal.*, 386 P.3d 788, 792 (Cal. 2017) ("While lack of substantive merit is one reason a plaintiff might fail to make the requisite showing, lack of subject matter jurisdiction is another. A plaintiff cannot prevail on her claim unless the court has the power to grant the remedy she seeks."). As detailed in Sound Physicians' motion to dismiss (Docket No. 69-1, § IV.A-B) and reply in support of the motion to dismiss (filed alongside this brief) (§ II.C), the NSA only allows for judicial review in the specific instances set

forth in § 10(a) of the FAA. Anthem has not pleaded facts to warrant review under any of those instances. This means that Anthem cannot meet its burden to show that it will prevail on its claims, and thus the Court should grant the anti-SLAPP motion.

2. Anthem's claims also fail under the California litigation privilege.

Anthem's claims also fail because they are barred by the litigation privilege under California law, which precludes liability for statements made in connection with litigation or arbitration. *See Silberg v. Anderson*, 786 P.2d 365, 368-69 (Cal. 1990); Cal. Civ. Code § 47(b). To start, there can be no dispute that the litigation privilege applies to arbitration. *Nickoloff v. Wolpoff & Abramson, L.L.P.*, 511 F. Supp. 2d 1043, 1045 (C.D. Cal. 2007); *Rasidescu v. Midland Credit Mgmt., Inc.*, 496 F. Supp. 2d 1155, 1160 (S.D. Cal. 2007). And IDR is arbitration. Federal regulations describe IDR as arbitration and require IDREs to have arbitration expertise, training, and the capacity to fulfill their duties. *See, e.g.*, 45 C.F.R. § 149.510(e)(2)(i)-(iii), *IDRE Application Form*, CMS.GOV, available at https://perma.cc/3PA5-Q5A5 (accessed February 20, 2026). Legislative history confirms the same. *See* H.R. REP. 116-615, pt. 1, at 56 (2020) (explaining that the IDR process is "also referred to as arbitration" and uses "a third-party arbitrator"). The Eleventh Circuit agrees that IDR is arbitration. *See RAMS*, 160 F.4th at 1114-24. So does the Fifth Circuit. In *Guardian Flight, L.L.C. v. Medical Evaluators of Texas ASO, L.L.C.*, the Fifth Circuit extended arbitral immunity to an IDRE "for its role in the IDR process." 140 F.4th at 623. The court agreed that

"because [an IDRE] is a quasi-judicial entity that functions like an arbitrator, it is entitled to the immunity from suit normally enjoyed by arbitrators." It reasoned that:

> Like judges and arbitrators, CIDREs [certified IDREs] are neutral arbiters of payment disputes with no stake in the underlying controversy. They receive competing offers for payment, consider information supporting the offers, and then choose one of the offers, which is binding on the providers and insurers. CIDREs, in sum, function more or less exactly like arbitrators. It is true that the NSA does not refer to CIDREs as 'arbitrators,' nor does it call the IDR process 'arbitration.' That is not determinative, however. What matters in assessing whether an official has immunity is his function, not his title.

Id. (internal citations omitted). Most importantly, Congress treats IDR as arbitration—in particular, it prescribes that the FAA rules apply. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

This resolves the question: the privilege applies. In any case, "[a]ny doubt as to whether the privilege applies is resolved in favor of applying it." *Tom Jones Enters., Ltd. v. Cnty. of L.A.*, 151 Cal. Rptr. 3d 718, 725 (Cal. Ct. App. 2013) (quoting *Adams v. Superior Ct.*, 3 Cal. Rptr. 2d 49, 53 (Cal. Ct. App. 1992)).

On this point, we note one important issue: Anthem has cited and relied on language from the dissent of a California Supreme Court ruling, without indicating that it is citing the dissent rather than the court's opinion. Anthem cites *Murray v. Alaska Airlines, Inc.*, 50 Cal.4th 860, 881 (2010), for the proposition that IDR "lacks 'indicia of administrative proceedings undertaken in a judicial capacity[,] includ[ing] a hearing before an impartial decision maker, testimony given under oath and 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.'" Opp. 17. Yet this language appears in the case's dissent. And this is not the only deficiency: the case is not about either anti-SLAPP or IDR. This quote arises in the context of whether an "administrative finding may operate as a bar to judicial relief." *Murray*, 237 P.3d 565, 578 (Werdegar, J., dissenting).

3. Anthem does not plead misrepresentation claims.

Anthem's misrepresentation claims fail because it acknowledges that it did not rely on the supposed misrepresentations, and instead believed them to be false. California courts are clear: "To allege actual reliance on misrepresentations with the required specificity for a fraud count, the plaintiff must plead that he believed the representations to be true...and that in reliance thereon (or induced thereby) he entered into the transaction." *Chapman v. Skype Inc.*, 162 Cal. Rptr. 3d 864, 876 (Cal. Ct. App. 2013) (cleaned up) (alteration in original); *accord Beckwith v. Dahl*, 141 Cal. Rptr. 3d 142, 162 (Cal. Ct. App. 2012); *Younan v. Equifax Inc.*, 169 Cal. Rptr. 478, 487 (Cal. Ct. App. 1980); *Russell v. Maman*, 2020 WL 10964919, at *4 (N.D. Cal. Apr. 10, 2020) (finding that plaintiffs failed to support a claim for fraud where plaintiffs alleged that defendants "told lies to [another party], who in turn relied on them" because "[t]his is different than actual reliance by [plaintiffs], which is required to state a claim for fraud under California law"). Anthem attempts to sidestep this clear rule, stating that

it can satisfy reliance by demonstrating "reliance by an intermediary who has the legal authority to compel the plaintiff's financial loss." Opp. 19-20.

Anthem primarily cites three cases in support.[3] *See* Opp. 20 (citing *ADA-ES, Inc. v. Big Rivers Elec. Corp.*, 465 F. Supp. 3d 703, 711 (W.D. Ky. 2020); *Holmberg v. Morrisette*, 800 F.2d 205, 211 (8th Cir. 1986); and *Pubali Bank v. City Nat. Bank*, 777 F.2d 1340 (9th Cir. 1985)). Two of the cases are not from the Ninth Circuit and thus do not control here. In the one case with precedential value, *Pubali Bank v. City National Bank*, the Ninth Circuit did not answer the question whether plaintiff satisfied the reliance element for its misrepresentation claims. Instead, it affirmed summary judgment under the law of the case doctrine. *Pubali Bank*, 777 F.2d at 1342, 1344. It held that the prior appellate decision establishing defendant's liability must be followed[4] because the defendants did not present substantially new evidence. *Id.* at 1344. In sum, *Pubali Bank* does not support the rule that Anthem suggests.

In any event, Anthem's complaint defeats its theory because Anthem concedes that it contested eligibility. *E.g.*, AC ¶ 305. A party "cannot rely on a representation if

[3] Anthem also cites *Florida Rock & Tank Lines, Inc. v. Moore*, a Georgia state case. Those facts are not applicable here, as there, the plaintiff relied on statements by a third party, rather than here where Anthem argues that a third-party relied on statements by the defendant. *See* 365 S.E.2d 836, 836-37 (Ga. 1988).

[4] In the prior appellate decision, "Pubali I," *Pubali Bank v. City National Bank*, 676 F.2d 1326 (9th Cir. 1982), the Ninth Circuit considered an appeal from the dismissal of plaintiff's claims of breach of contract and misrepresentation. The court does not distinguish between its breach of contract and misrepresentation analysis in its reasoning or holdings, and it does not analyze reliance at all.

he knows that it is false." *In re Eashai*, 87 F.3d 1082, 1090 (9th Cir. 1996) (citation omitted); *accord Godfrey v. Navratil*, 411 P.2d 470, 474 (Ariz. Ct. App. 1966) ("Assuming a false representation, there is still a point at which a buyer may be forced to abandon the protection of the false or misleading representation and open his eyes to that which is signaling danger, or thereafter proceed at his own peril…."), *overruled on other grounds by Horne v. Timbanard*, 434 P.2d 520, 522 (Ariz. Ct. App. 1967). Assuming *arguendo* that Anthem is correct that the eligibility attestations were false, its reliance theory fails because, by alerting the IDRE that the dispute was ineligible, the IDRE, as the party supposedly relying on the misrepresentation, was apprised of the attestation's falsity. It therefore cannot be said that the IDRE actually or justifiably relied on Sound Physicians' supposed misrepresentation because it knew that it was false. *See In re Eashai*, 87 F.3d at 1090.

4. Anthem does not plead UCL claims.

a) Unlawful theory.

Sound Physicians' opening brief shows why Anthem's unlawful UCL theory fails under the litigation privilege. OB § IV.B.3, p. 24. In response, Anthem erroneously claims that litigation privilege does not apply to UCL claims predicated on California Penal Code § 550 because § 550 is a more specific statute than the litigation privilege. Opp. 24. But this is not the law in California, and Anthem's "instructive" case instead proves Sound Physicians' point. There, the court held that litigation privilege did not bar a lawsuit because the Insurance Fraud Prevention Act

("IFPA") (for which § 550 is a predicate) was a more specific statute, not that the predicate § 550 was. *People ex rel. Alzayat v. Hebb*, 226 Cal. Rptr. 3d 867, 870 (Cal. Ct. App. 2017) (holding that a lawsuit was not barred by the litigation privilege where "[t]he IFPA is a more specific statute than the litigation privilege, and application of the litigation privilege to claims under the IFPA…would in large measure nullify the [IFPA]"). The court even notes that "[i]t is not difficult to imagine other types of insurance fraud that would potentially trigger the protections of the litigation privilege." *Id.* at 887. Anthem also cites *People v. Persolve, LLC*, 160 Cal. Rptr. 3d 841 (Cal. Ct. App. 2013), to show that "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." Opp. 24. But a California court has cast doubt on *Persolve*, stating it is "a case we consider an outlier" and that, in the court's view, "*Persolve* diverges from controlling authority in articulating this test." *People v. Potter Handy, LLP*, 316 Cal. Rptr. 3d 87, 100-102 (Cal. Ct. App. 2023) (holding that "the people cannot avoid the litigation privilege based on the predicate for a UCL claim" where the UCL claim was based on a criminal statute, as here, and that criminal "remedy remains available, even as the litigation privilege bars this derivative action under the UCL"). Thus, because Anthem's unlawful UCL claims fail on multiple fronts, Anthem has not met its burden.

b) Unfairness theory.

Anthem claims it can pursue an unfairness UCL claim because it is a consumer; it says so because this is the only way it could conceivably plead a theory under this prong. Opp. 24-26. This assertion is untenable, as Anthem's complaint pleads the opposite: it delineates between payors, like Anthem, and consumers, such as individuals receiving medical services. *See* AC ¶ 123 ("While shielding the IDRE from the inflated billed changes was supposed to offer a measure of protection for both payors and consumers…."); p. 32 ("IV. Defendants' NSA Scheme Damages Anthem, Affiliated Health Plans, and Consumers."); ¶ 352 ("Moreover, through the significant financial harm this conduct causes to Anthem and its affiliated plans, it also disrupts the insurance market and causes significant downstream harm to consumers through the increased cost of health care services.").

The idea that Anthem, a massive insurance company, is a "consumer" is so farfetched that it betrays Anthem's argument as a whole.

c) Fraudulent theory.

Anthem's opposition brief contains no argument that Sound Physicians engaged in any fraudulent business practice under UCL. *See* Opp. at 21-22 (confirming that Anthem only makes arguments under the other two prongs).

D. Sound Physicians will be the prevailing party if the Court grants the anti-SLAPP motion.

Anthem argues that its own state-law claims are so unimportant to the case that Sound Physicians would win nothing by defeating them. *See* Opp. 26-27. As to the substance of this case and Anthem's motivation for bringing these claims, that speaks for itself.

As to anti-SLAPP, Anthem misunderstands the test: it isn't about whether a party prevails in the case, but whether it prevails on its anti-SLAPP motion. "[T]he anti-SLAPP statute does not refer to parties that have 'prevail[ed]' in a lawsuit; it refers specifically to defendants that have prevailed '*on [the] special motion to strike*.'" *Barry*, 386 P.3d at 794 (alteration and emphasis in original) (quoting Cal. Civ. Proc. Code § 425.16(c)(1)). In any case, here, striking the state-law claims from Anthem's complaint would be far from a "technical" or illusory victory. *See* Opp. 26. Unlike *Moran v. Endres*, where the court only struck a derivative conspiracy claim, the present anti-SLAPP motion targets three independent state-law claims, two of which "engender[]…tort liability" (fraudulent and negligent misrepresentation) and one that alleges multiple violations of California's UCL, with one violation having five predicates. AC ¶¶ 299-314, 327-338, 347-354; *Moran v. Endres*, 37 Cal. Rptr. 3d 786, 788 (Cal. Ct. App. 2006). Further, Anthem alleges eight total causes of action against Sound Physicians (Counts 2 and 4, RICO violations; Count 6, Fraudulent Misrepresentation; Count 8, Negligent Misrepresentation; Count 10, California UCL;

Count 11, Vacatur; Count 12, ERISA Claim for Equitable Relief; and Count 13, Declaratory and Injunctive Relief). Striking the state-law claims (Count 6, Count 8, and Count 10) would materially alter the case, leaving Sound Physicians to defend only against five total causes of action (two of which—Count 11, vacatur; and Count 13, declaratory and injunctive relief—are simply seeking types of relief).

Thus, if the Court strikes the state-law claims, Sound Physicians is the prevailing party under the anti-SLAPP motion.

E. Sound Physicians is entitled to an award of attorney fees.

The anti-SLAPP statute mandates an attorney fee award for a prevailing defendant. Cal. Civ. Proc. Code § 425.16(c)(1). This Court may retain jurisdiction over the anti-SLAPP motion even if it dismisses the federal claims. *See Royal Canin U.S.A., Inc. v. Wullshleger*, 604 U.S. 22, 31-32 (2025) (discussing 28 U.S.C. § 1367(c) and noting that "supplemental jurisdiction persists" even where "the district court 'has dismissed all claims over which it has original jurisdiction'").

And if this Court were to grant the anti-SLAPP motion based on a lack of subject-matter jurisdiction as to the underlying claims, it may still award attorney fees. The California Supreme Court directly addressed—and rejected—Anthem's argument on this point. *See Barry*, 386 P.3d at 793 ("Nor is lack of subject matter jurisdiction a bar to awarding attorney's fees and costs."); *cf. Wigington v. MacMartin,* 2022 WL 3999887, at *4 (E.D. Cal. Sept. 1, 2022) (awarding fees to defendant under the anti-SLAPP statute though it did not have personal jurisdiction over him, highlighting the

reasoning in *Barry v. State Bar of California*, and noting that "both state and federal courts recognize the importance of protecting a trial court's **'incidental power to require the plaintiff to compensate the defendant for the undue burden of defending against the nonmeritorious claim,'** even where a court lacks jurisdiction over a defendant" (emphasis added) (citing *Barry*, 386 P.3d at 793)).

The district court's approach in *Bhs Law LLP v. Worldex Industry & Trading Co.*, 2025 WL 3754296 (N.D. Cal. 2025), does not change this conclusion. There, the court "decline[d] to undertake a *sua sponte* analysis of whether anti-SLAPP attorney's fees are appropriate under a non-merits theory." *Id.* at *19. It noted that the anti-SLAPP motion at issue there was based only on the merits of the plaintiff's claims, and that because of the lack of subject-matter jurisdiction, it could not reach those merits in order to determine who was right for anti-SLAPP purposes. *Id.* The present case is different. Here, Sound Physicians argues that it is entitled to an award of attorney fees under the anti-SLAPP statute *both* because Anthem brought claims that are barred by jurisdiction-stripping, *and* because Anthem is wrong on the merits. *See Barry*, 386 P.3d at 792 ("While lack of substantive merit is one reason a plaintiff might fail to make the requisite showing, lack of subject matter jurisdiction is another. A plaintiff cannot prevail on her claim unless the court has the power to grant the remedy she seeks."). The basic question is whether Anthem can show it will prevail on its claim. If it can't—whether for want of jurisdiction or because of the merits—then Sound Physicians prevails under the anti-SLAPP statute. Under this broader challenge, *BHS*

Law LLP does not preclude awarding attorney fees, and the Court should award them here. The Court does not need to reach the merits of Anthem's state-law claims to do so, it merely needs to determine that Anthem cannot carry its burden to show that it will prevail on those claims.

All of this is consistent with the basic purpose of the anti-SLAPP law. Anthem's underlying claim is barred by the federal law forbidding judicial review of IDR cases, but Anthem brought the claim anyway—to punish Sound Physicians and discourage it from exercising its right to IDR. The reality that the Court cannot relitigate the IDR arbitrations is exactly why Anthem's claim was improper, and why it should award attorney fees under the anti-SLAPP law.

F. Ninth Circuit precedent is consistent with *Berk*.

Anthem argues that the Supreme Court's ruling in *Berk* changes the Ninth Circuit's binding precedent holding that California's anti-SLAPP statute (as modified by the Ninth Circuit) applies in federal court. But *Berk* neither says nor does any such thing. It does not expressly or implicitly overrule *Gopher Media* or other Ninth Circuit cases applying California's anti-SLAPP statute in federal court. Thus, Ninth Circuit precedent controls. *See generally, e.g.*, *Gopher Media LLC v. Melone*, 154 F.4th 696 (9th Cir. 2025) (acknowledging the anti-SLAPP statute's application in federal court); *Wynn v. Chanos*, 685 F. App'x 578 (9th Cir. 2017) (same); *Travelers Casualty Ins. Co. of Am. V. Hirsch*, 831 F.3d 1179 (9th Cir. 2016) (applying the anti-SLAPP statute

in federal court); *Vess*, 317 F.3d 1097 (same). If it is to change, such a change can only come from a ruling of the Ninth Circuit *en banc.*

In *Berk*, the Supreme Court addressed Delaware's affidavit law, requiring plaintiffs to attach an affidavit by a medical professional to any complaint for medical malpractice. *Berk,* at 2-3. It held that the Delaware law does not apply in federal court because the law and Federal Rule of Civil Procedure 8 conflict. *Id.* at 10-11. It reasoned that "Delaware's affidavit requirement is at odds with Rule 8 because it demands more: A medical malpractice suit cannot proceed 'unless the complaint is accompanied by...[a]n affidavit of merit.' § 6853(a)(1). Under Rule 8, factual allegations are sufficient, but under the Delaware law, the plaintiff needs evidence too." *Id.* at 6. In sum, the Court confirmed the proposition that when "a Federal Rule 'answers the question in dispute'" the federal rule controls. *Id.* at 4 (quoting *Shady Grove v. Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 398 (2010)).

As to the anti-SLAPP law, the Ninth Circuit's precedent is already in compliance with this rule, allowing the federal rule to control where it conflicts, and avoiding the concern addressed in *Berk. See, e.g.*, *Sarver*, 813 F.3d at 900 (declining to apply the anti-SLAPP's 60-day time frame in federal court because "the timing controls imposed by section 425.16(f) directly collide with the more permissive timeline Rule 56 provides for the filing of a motion for summary judgment"); *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) (recognizing that the discovery-limiting aspects of the anti-SLAPP statute do not apply in federal court

because they collide with Rule 56). Conversely, when there is no conflict with federal law, the anti-SLAPP provision applies, as with the fee-shifting provision. The fee-shifting provision does not contradict any federal rule of civil procedure: the rules are silent on fee-shifting, and fee-shifting is allowed under other federal laws, where applicable. *See Alaska Rent-A-Car, Inc. v. Avis Budget Grp. Inc.*, 738 F.3d 960, 973 (9th Cir. 2013) (noting that, for *Erie* purposes, "state law on attorney's fees is substantive, so state law applies in diversity cases"). Thus, application of the anti-SLAPP statute to award attorney fees here comports with *Berk*. *Berk* involved a direct conflict between a state and federal pleading requirement. No direct conflict is present here.[5]

Anthem also claims that *Berk* rejected efforts to modify the application of state law to comport with federal rules. Opp. 31. But *Berk* says no such thing. It did reject the defendant's argument there that the affidavit requirement could be harmonized with the federal rules, but it did so for reasons specific to that law. *Berk*, at 8-9. In

[5] Anthem relies on out-of-circuit caselaw to support its point that the anti-SLAPP statute should not be applied in federal court. *See* Opp. 28. Yet the Ninth Circuit has already established that those cases, beyond lacking precedential value, lack rhetorical value as well. *CoreCivic, Inc v. Candide Grp., LLC*, 46 F.4th 1136, 1143 (9th Cir. 2022) (noting that "[m]ost of the out-of-circuit cases refusing to apply state anti-SLAPP statutes have grounded their reasoning in conflicts between those statutes' heightened pleading standards and the standards dictated by Rules 8, 12, and 56," citing *La Liberte v. Reid*, *Klocke v. Watson*, *Carbone v. Cable News Network, Inc.*, and *Abbas v. Foreign Policy Group, LLC*, and stating that "***[n]o such conflict exists in this Circuit***" (emphasis added)).

short, it did not reject the approach, but merely held that modification did not work in the circumstances of the law in question, given the clear language in Rule 8. *Id.*

And *Berk* does not alter the framework set forth in *Shady Grove v. Orthopedic Associates, P.A. v. Allstate Insurance Co*. *See Berk*, at 4 (relying on *Shady Grove* in articulating the legal standard). The Court simply applies the legal standard set forth in *Shady Grove* to a new situation. *Id.* Because the Ninth Circuit in *CoreCivic, Inc. v. Candide Group, LLC* already decided that *Shady Grove* does not preclude the application of anti-SLAPP in federal court, 46 F.4th 1136, 1143 (9th Cir. 2022), this Court need not answer the question again.

Thus, because the Supreme Court did not expressly or implicitly overrule the Ninth Circuit's precedent, that precedent must control here.

III. CONCLUSION

The Court should strike the state-law claims (fraudulent misrepresentation, negligent misrepresentation, and the UCL claims (Counts 6, 8, and 10)) without leave to amend, and award Sound Physicians its attorney fees and costs.

Dated: February 24, 2026

MCDERMOTT WILL & SCHULTE LLP

By: */s/ Tala Jayadevan*
Tala Jayadevan

Laura McLane (appearing *pro hac vice*)
Matthew L. Knowles (appearing *pro hac vice*)
Connor S. Romm (appearing *pro hac vice*)

Attorneys for Defendants Sound Physicians Emergency Medicine of Southern California, P.C. and Sound Physicians Anesthesiology of California, P.C.

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Sound Physicians Emergency Medicine of Southern California, P.C. and Sound Physicians Anesthesiology of California, P.C., certifies that this brief contains 6,773 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 24, 2026

MCDERMOTT WILL & SCHULTE LLP

By: */s/ Tala Jayadevan*
Tala Jayadevan
Laura McLane (appearing *pro hac vice*)
Matthew L. Knowles (appearing *pro hac vice*)
Connor S. Romm (appearing *pro hac vice*)

Attorneys for Defendants Sound Physicians Emergency Medicine of Southern California, P.C. and Sound Physicians Anesthesiology of California, P.C.