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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' MOTION TO DISMISS

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

AMENDED COMPLAINT FILED: 10/17/2025

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I. INTRODUCTION

Anthem's[1] opposition and the two amicus briefs filed with it reveal that Anthem's argument is really a political one: it does not like the IDR arbitration system that Congress established under the NSA, and it seeks changes in the law and regulations that govern how the system functions. That, of course, is a matter for Congress and the Centers for Medicare and Medicaid Services ("CMS").

Setting political arguments aside, the facts alleged in the Complaint show why this case must be dismissed as a matter of law. Anthem filed an initial complaint with five purported examples of IDR cases where Sound Physicians had supposedly submitted inaccurate information; it claimed there were "thousands" more, and that each supposed error was wire fraud. *E.g.*, OC ¶¶ 5, 155. When Sound Physicians demonstrated that it was really Anthem that was wrong on the facts as to at least three of the five examples (the other two also remain disputed), Anthem was forced to amend and fix its errors. It also downgraded its estimate to "hundreds" of other IDRs that were supposedly errors, and now only offers four examples of the supposed fraud. OB 24; *e.g.*, AC ¶ 9. These allegations are not sufficient under any of Anthem's legal theories.

Above all, Congress has prescribed that IDR rulings "shall not be subject to judicial review" except under the grounds in the FAA. 42 U.S.C. § 300gg-

[1] This reply uses the same defined terms as Sound Physicians' opening brief. "Opp." citations refer to Anthem's opposition brief (Docket No. 93). "OB" citations refer to Sound Physicians' opening brief (Docket No. 69-1).

111(c)(5)(E)(i)(II). Anthem makes a half-hearted effort to show the FAA test is met, but—for the reasons below—it plainly is not, and this is not a close call. Instead, Anthem pivots to a different argument: that while Congress stripped jurisdiction to review the arbitrators' rulings, the Court can still review *de novo* the arbitrators' determinations about whether the matter is eligible for IDR in the first place. No court has ever adopted this argument, and this Court should not be the first, for at least three reasons:

First, Congress said nothing of the sort, and other portions of the NSA make clear that the jurisdiction-stripping provision applies to parties' applications for IDR and the entire arbitration process. *See infra* § II.C.2. Similarly, two circuit courts of appeal have already made clear that (as the Eleventh Circuit put it) "judicial review of IDR awards is limited to the grounds available under the FAA…and cannot be expanded to include circumstances where facts may be mispresented to the IDR arbitrator." *RAMS*, 160 F.4th 1110, 1117 (11th Cir. 2025). Likewise, as the Fifth Circuit confirmed, the "NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025) (original emphasis). There is no exception for unlimited and *de novo* review of eligibility decisions.

Second, the distinction makes no sense. The IDR's determination that a case is eligible for IDR is inherently part of the arbitrator's ruling in favor of one party or the other; these are two sides of the same coin.

Third, Anthem's complaint makes it clear that it *does* seek review of the payment decisions in question, even while admitting that they are insulated from review. It argues that Sound Physicians somehow committed wire fraud by proposing payments that Anthem thinks are too high, and that the arbitrators erred when they ruled that Sound Physicians' too-high bid was more reasonable than Anthem's bid. AC ¶¶ 222, 278. It offers no legal explanation for how this could be fraud or could be subject to review here—and the reason it does not bother is that there is no such legal argument, and Anthem is making a political point instead.

The next problem with Anthem's case is Rule 9(b). Anthem agrees that because it alleges fraud, Rule 9(b) applies. Opp. 15. But citing an unpublished 2015 ruling from a district court, it argues that it can ignore Rule 9(b) simply because Anthem says that there were hundreds of other incidents of supposed fraud, not just the four it identifies. *Id*. (citing *Almont Ambulatory Surgery Ctr., LLC v. United Health Grp., Inc.,* 2015 WL 12778048, at *8 (C.D. Cal. Oct. 23, 2015)). But longstanding and controlling precedent from the Ninth Circuit (which Anthem does not cite) makes clear that Rule 9(b) is relaxed in instances of complex fraud only where the details are exclusively in the *defendant's* possession, and not the plaintiff's. The opposite is true here. And in the case Anthem cites, the plaintiff provided dozens and dozens of examples. Here, Anthem cited four (and as the amended complaint illustrates, it was Anthem that got the facts wrong as to three of them). The reason why this is so important is that four

examples of supposed errors among thousands of arbitrations are not reliable indicia of fraud.

The Court should also consider the implications of the rule that Anthem proposes, and reject it. In all, there have been thousands of IDR arbitrations between Anthem and Sound Physicians. *See, e.g.*, OC ¶ 5. Of these thousands, Anthem's complaint identifies four IDRs where it says the arbitrator made the wrong decision, and "estimates" that "hundreds" more were wrong. AC ¶¶ 224-248; Opp. 11. From this alone, Anthem argues that it can sue and conduct discovery about *all* of these unidentified arbitrations (it does not even list them) and re-litigate all of them under RICO.

This cannot be the law, and no court has held that it is. It would mean that the losing party to *any* IDR could re-litigate the dispute in court by alleging that the other side's submissions contained incorrect statements, and the incorrect statements were fraud. Anthem's theory violates the NSA's express limits on judicial review. It violates the FAA, which does not permit relitigating arbitration merely because one side disagrees with the arbitrator's ruling or calls the other side's argument fraud. It violates Rule 9(b), which requires fraud claims to be pleaded with particularity. And it violates common sense, because four supposed errors among thousands of cases do not show or suggest fraud.

The Court should grant the motion to dismiss without leave to amend, as Anthem has made no effort to explain what it would fix to address these problems if

permitted another chance to amend. In reality, the problems are insurmountable and require dismissal.

II. ARGUMENT

A. Anthem does not defend two of its three theories.

Anthem's complaint asserts that Sound Physicians committed fraud for three reasons: because it allegedly submitted disputes that are not eligible for IDR, it sought arbitration in a large number of cases, and its payment proposals were larger than Anthem thinks they should have been. AC ¶ 3. But its opposition makes no effort to explain why the second or third could conceivably be fraud. Anthem is a massive insurance company, and Sound Physicians has over 4,000 providers. AC ¶ 25. A large volume of claims between them is the expected outcome, not a surprise. Likewise, Anthem offers no explanation why it would be "fraud" to submit a proposal that is higher than Anthem thinks is fair, particularly where the arbitrator's job is to select the more reasonable of the offers from each side. The Court should find that Anthem has abandoned and waived its arguments on these theories. *Personal Elec. Transps., Inc. v. Off. of U.S. Tr.*, 313 F. App'x 51, 52 (9th Cir. 2009).

B. Anthem misstates the IDR process and the facts pleaded in its own complaint.

Because it is wrong on the law, Anthem attempts to re-write the facts pleaded in its complaint while also mischaracterizing the law and regulations regarding IDR.

1. IDR is arbitration.

Abruptly, Anthem now argues that IDR is not arbitration. Opp. 45, 49. But Anthem's original complaint referred to IDR as arbitration eight times. OC ¶¶ 66, 110, 163, 289, 299, p. 66 (seeking "Vacatur of NSA Arbitration Awards"), p. 69 (seeking injunction related to alleged "improper arbitrations" and vacatur of "NSA arbitration awards"). Its amended complaint continues to do so on one occasion. AC ¶ 366.

Anthem relies upon a single, unpublished case from the District of New Jersey, *Modern Orthopaedics of New Jersey v. Premera Blue Cross*, which concluded that "the IDR process is not an arbitration, as the parties never agreed to the process." 2025 WL 3063648, at *5 (D.N.J. Nov. 3, 2025). This is contrary to the overwhelming weight of judicial, statutory, regulatory, and Congressional authority. Whether the parties agreed to the process has no bearing on whether IDR is arbitration, and numerous other courts, *including two circuit courts of appeal*, have confirmed that IDR is arbitration. *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 622-23 (5th Cir. 2025); *RAMS*, 160 F.4th at 1114-24.

Federal regulations and guidance also 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).

Most importantly, Congress says that IDR is arbitration—in particular, it prescribes that the FAA rules apply. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). 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").

Whether Anthem agreed to the process does not matter. Congress has mandated arbitration on numerous occasions. *See, e.g.*, *Ass'n of Flight Attendants v. Mesa Air Grp., Inc.*, 567 F.3d 1043, 1047 (9th Cir. 2009); *Del. Dep't of Health & Soc. Servs., Div. for Visually Impaired v. U.S. Dept. of Educ.*, 772 F.2d 1123, 1131 (3d Cir. 1985).

Here, Congress wanted and designed an efficient and abbreviated process for these numerous disputes. *RAMS*, 160 F.4th at 1119 ("Congress designed the IDR process to create an efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs…." (cleaned up)). The text of the NSA makes clear that Congress did not want litigation, discovery, and trial in federal court. *See* 42 U.S.C. § 300gg-111(c)(1)(B), (2), (5). Anthem's lawsuit turns that on its head. In any event, if Anthem and its amici supporters want a different process, their remedy lies with Congress, not the courts. *See Shoshone-Bannock Tribes of Fort Hall Rsrv. v. U.S. Dep't of the Interior*, 153 F.4th 748, 767 (9th Cir. 2025) ("[W]e are not permitted to 'rewrite the statute that Congress has enacted' to reach a favored policy outcome." (quoting *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 130 (2016))); *Guardian Flight L.L.C.*, 140 F.4th at 277 (discussing the NSA's structure and noting, "the wisdom of Congress's policy choice is beyond our judicial ken").

2. IDREs are certified by the government, and Anthem's arguments about financial incentive are groundless.

Unhappy with their rulings, Anthem chooses to attack the arbitrators. It calls them "faceless," Opp. 37, says that "IDREs are not neutral parties when evaluating eligibility," Opp. 48, and suggests they are compromised because they "are not paid unless they decide that a dispute is eligible for IDR," Opp. 6. This is rhetoric, not legal argument. Tellingly, Anthem does not seek vacatur under 9 U.S.C. § 10(a)(2) ("evident partiality or corruption in the arbitrators"), nor could it.

Every arbitrator, adjudicating any matter, is compensated for their time, and thus under Anthem's theory, every arbitrator is inherently biased against every defendant (who would prefer to dismiss the case early). This is, of course, not the law. And it is not that IDREs are paid to find that a matter is eligible, it is that a matter only goes forward (and there is only work to do) if it is eligible. Again, the same argument would apply to any arbitrator in any context charged with determining whether a dispute is arbitrable; the structure of the system does not mean that every decision must be subject to review in court, a result that would render arbitration a pointless exercise.

Congress built safeguards into the NSA to ensure the integrity of the process. Regulators must ensure that the IDRE selected to adjudicate a dispute is free from any conflict of interest. 42 U.S.C. § 300gg-111(c)(4)(F)(i)(III). IDREs must also show expertise in arbitration, claims administration, managed care, billing and coding, and health care law, as well as adequate staffing and fiscal integrity. *Id.* § 300gg-

111(c)(4)(A); 45 C.F.R. § 149.510(e)(2)(i)-(iii), (vi). Finally, CMS has prescribed a process for appealing or re-opening IDRs where the arbitrator made an error. *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). Anthem would prefer that Congress had written the law differently, but its attacks on the arbitrators are groundless.

3. By law, IDREs review and determine whether a claim is eligible for IDR—it is not an "honor system."

In direct conflict with its own pleadings and with government regulations, Anthem asserts that there is no "meaningful" process for determining IDR eligibility. Opp. 6. It calls this an "honor system." Opp. 1, 4.

This is false. IDREs are not only authorized but required to assess and rule on eligibility, and controlling law and federal regulations say the same thing. *See, e.g.*, AC ¶¶ 73, 116; 42 U.S.C. § 300gg-112(b)(5)(D); 45 C.F.R. § 149.510(c)(1)(v).

Anthem also claims that it has no "meaningful" opportunity to contest eligibility. Opp. 6, 10, 12, 39, 40. But as Anthem pleads, it objected to eligibility in at least three out of four of the IDR disputes with Sound Physicians it now challenges. AC ¶¶ 234, 240, 247. That it lost does not mean that it had no opportunity to be heard. Tellingly, Anthem does not allege that IDREs always make the wrong decision on

eligibility, just that Anthem "estimates" that "almost half" of these decisions were errors. Opp. 11.

Anthem also objects that there are "generally" no written explanations of the rulings on eligibility. Opp. 6, 30-31. But as the Ninth Circuit has recognized, "arbitrators are not required to state the reasons for their decisions." *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1402 (9th Cir. 1992); *see also RAMS*, 160 F.4th at 1120 (addressing IDR arbitration and noting that "the decision itself is enough" (citation omitted)).

C. Congress has directly prohibited the judicial review that Anthem seeks here.

1. Anthem does not meet the standards for vacatur under the FAA.

Anthem relies on only two of the four possible grounds for vacatur: allegations of fraud and that the arbitrators exceeded their powers.[2] But both fail under Ninth Circuit precedent.

As to fraud: a party seeking vacatur must establish: (1) fraud, by clear and convincing evidence, (2) which was not discoverable upon the exercise of due diligence prior to or during the arbitration, and (3) which was materially related to an issue in the arbitration. *Pac. & Arctic Ry. & Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991).

[2] The complaint also references "undue means." AC ¶¶ 357, 359. The opening brief explained why this test is not met. OB 14-15. Anthem has abandoned this theory.

As further discussed below, Anthem has not adequately pleaded fraud under Rule 9(b), let alone by clear and convincing evidence. Sound Physicians' opening brief illustrated these defects, OB 9-13, which Anthem has not rebutted. Most of all, Anthem failed to show that the alleged fraud was not "discoverable by due diligence before or during the proceeding." *Pac. & Arctic Ry. & Navigation Co.*, 952 F.2d at 1148. In fact, it pleads the opposite. Anthem alleges that it "object[ed] to eligibility" in at least three out of four of the IDR disputes it now challenges. AC ¶¶ 234, 240, 247. That admission shows both Anthem and the arbitrators knew the very issues it now calls fraudulent. That bars further review here.

Anthem misstates the FAA standard by asserting that vacatur for fraud requires a "confrontational, adversarial hearing," relying upon a state-law case addressing a private, commercial arbitration with different procedural requirements. Opp. 30-31 (citing *Pour Le Bebe, Inc. v. Guess? Inc.*, 112 Cal. App. 4th 810, 833 (Cal. Ct. App. 2003)). Congress deliberately structured IDR arbitration as an "efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs," without discovery, litigation, or hearings. *RAMS*, 160 F.4th at 1119 (cleaned up). Having implemented that design, Congress then limited review to the FAA standards. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). It would make no sense to say the FAA standards do not apply because of the system that Congress set up in the same statute.

As to arbitrators' authority: Anthem misunderstands the test for vacatur where arbitrators exceed their power. Anthem argues that the arbitrators exceeded their power

by ordering it to pay for medical care after overruling Anthem's eligibility objection. In practice, this would mean that any time an arbitrator decides a threshold issue, a federal court would then be allowed to review each of its subsequent decisions in the arbitration if the losing side alleges that the arbitrator was wrong on the initial ruling.

Not so. Under the FAA, the question is whether arbitrators had authority to decide the threshold issue (here, eligibility)—not "the rightness or wrongness" of such decision. *See HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1241 (9th Cir. 2022); *see also Schoenduve Corp. v. Lucent Techs., Inc.*, 442 F.3d 727, 733 (9th Cir. 2006) ("[T]he arbitrator's interpretation of the scope of his powers is entitled to the same level of deference as his determination on the merits." (citations omitted)). In contractual arbitration, parties may delegate arbitrability to the arbitrator, and the Supreme Court has long recognized that arbitrators may be empowered to determine the scope of their own jurisdiction. *See AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986). Here, Congress decided that IDREs are expressly authorized to decide eligibility, as Anthem concedes. *See* AC ¶¶ 73, 116; *see also* 42 U.S.C. § 300gg-112(b)(5)(D); 45 C.F.R. § 149.510(c)(1)(v). This resolves the issue. There is no basis to vacate under 9 U.S.C. § 10(a)(4) merely because Anthem disagrees with their rulings. If Anthem were right, every IDR award would be relitigated in federal court under § 10(a)(4) where the losing side challenges eligibility. That is not the law.

2. The Court should reject Anthem's novel argument that "eligibility" decisions are subject to unlimited judicial review.

To avoid dismissal, Anthem invents a distinction between IDRE rulings on questions like eligibility, and rulings ordering one side to pay the other a certain amount. It argues that the NSA's limitations on judicial review apply only to the latter. According to Anthem, there is no limit to judicial review of eligibility rulings. No court has adopted this argument, and it is flatly inconsistent with rulings from other circuit courts of appeal.

First, decisions about eligibility are inherently part of every IDR ruling. "Subparagraph A" of § 300gg-111(c)(5), which is what is protected from judicial review, includes all of the IDRE's work. It says that within 30 days of being appointed, the IDRE must rule on the dispute and select one of the parties' submissions as the appropriate payment amount. 42 U.S.C. § 300gg-111(c)(5)(A). There is no *other* section of the statute, excluded from the FAA review limitation, that addresses eligibility rulings. All of the IDRE's work is encompassed in Subparagraph A. If an IDRE ruled that a dispute was not eligible, it would have no awards to choose from. Choosing one proposed award as the winner is entirely premised on its finding of eligibility.

Second, Congress expressly confirmed that IDR applications and eligibility determinations are protected from judicial review. Anthem claims that "[n]othing in the NSA suggests determinations concerning IDR eligibility are barred from review."

Opp. 24. That is wrong. A provision in another section of the NSA makes clear that the jurisdiction-stripping provisions "apply with respect to a determination of [an IDRE] under subparagraph (A), the notification[3] submitted with respect to such determination, the services with respect to such notification, and the parties to such notification." 42 U.S.C. § 300gg-112(b)(5)(D). *Compare id.*, *with id.* § 300gg-111(c)(5)(E). Again, while this appears in a different section (§ 300gg-112(b)(5)(D)), ***it expressly cites the section at issue here*** (§ 300gg-111(c)(5)(E)) ***and says it applies to review under this section too*** (it says the restriction applies broadly to IDR applications and the whole process "in the same manner" as under § 300-111(c)(5)(E)). *Id.* § 300gg-112(b)(5)(D). This too forecloses the distinction on which Anthem relies.

Third, while arguing that Subparagraph A only covers the IDRE's decision about which side's payment proposal is right, Anthem expressly challenges such payment rulings. It argues that Sound Physicians somehow violated the law by proposing a payment that is too high, and the IDREs erred by adopting those proposals. *See* AC ¶¶ 224-248. But Anthem offers no explanation for why those decisions about which offer is more reasonable could be subject to judicial review.

[3] The "notification" refers to the application for IDR submitted by the Defendants here. *Compare* 42 U.S.C. § 300gg-112(b)(1)(B), *with id.* § 300gg-111(c)(1)(B).

D. Anthem cannot use collateral attacks to avoid the jurisdiction-stripping provision.

Congress prescribed that IDR rulings "shall not be subject to judicial review" except under the grounds in the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Anthem asks the Court to ignore this, and allow judicial review under RICO, ERISA, and state law, ignoring the strict restrictions on vacatur. It defends its position on three grounds: (1) that it seeks to overturn hundreds of unidentified awards at once; (2) that it seeks injunctive relief; and (3) that it seeks damages beyond those available in the IDR proceedings. Opp. 31-33. The Fifth Circuit rejected a related argument in *Guardian Flight*, holding that it "artificially narrows the term 'judicial review' that Congress used in the NSA." 140 F.4th at 275 n.3. This Court should reject it for four reasons:

First, as discussed, there is no generic statutory or common-law cause of action for vacatur, and the NSA itself creates no private right to set aside an IDR ruling. Any vacatur challenge therefore must proceed under the FAA and its procedural requirements. But even if those procedures did not apply, Anthem's RICO, ERISA, and state-law claims would still be impermissible collateral attacks. The cases Anthem cites use the FAA's procedural framework to illustrate Congress's intent to cabin post-award challenges, not to condition preclusion on the applicability of FAA procedures. Indeed, those very authorities make clear that the doctrine against collateral attacks exists to prevent parties from reframing objections to binding arbitral outcomes as independent federal claims. *Bachman Sunny Hill Fruit Farms, Inc. v.*

Producers Agric. Ins. Co., 57 F.4th 536, 541-42 (6th Cir. 2023) (holding that the collateral-attack doctrine bars parties from repackaging challenges to an arbitration award as independent federal claims); *Credit Suisse AG v. Graham*, 533 F. Supp. 3d 122, 133 (S.D.N.Y. 2021) (discussing § 10 and explaining that allowing state-law claims seeking relief from "effect of an arbitration award would create a backdoor for every aggrieved participant in an arbitration to avoid the stringent time frames and procedural and substantive requirements of the FAA"); *Sander v. Weyerhaeuser Co*., 966 F.2d 501, 502 (9th Cir. 1992) ("We would establish poor precedent if we allowed Sander to bring an action under securities laws because he is unhappy with the results of an adjudicative proceeding."); *Nickoloff v. Wolpoff & Abramson, L.L.P.*, 511 F. Supp. 2d 1043, 1044 (C.D. Cal. 2007) ("Seeking damages in federal court for alleged wrongdoing that compromised an arbitration award is an impermissible collateral attack on the award itself." (citation omitted)).

Second, it makes no sense to say that the bar applies where a losing party challenges one arbitration award but does not apply where it challenges many. *See Ibarzabal v. Morgan Stanley DW, Inc.*, 2007 WL 9753006, at *3-4 (S.D.N.Y. Dec. 5, 2007) (rejecting class action attacking defendant's alleged conduct in multiple prior arbitrations); *Quintana v. Morgan Stanley DW, Inc.*, 2005 WL 8155929, at *4 (S.D. Fla. Dec. 8, 2005) (rejecting claims based on defendant's failure to produce discovery materials in several prior arbitrations); *Nazar v. Wolpoff & Abramson, LLP*, 530 F. Supp. 2d 1161, 1166, 1169 (D. Kan. 2008) (similar). And while it says in conclusory

fashion that there are "hundreds" of cases at issue, Anthem can only identify four (down from five in its original complaint).

Third, seeking injunctive relief is no shortcut to bypass the FAA. *Ctr. for Excellence in Higher Educ., Inc. v. Accreditation All. of Career Schs. & Colls.*, 2026 WL 303593, at *8 (4th Cir. Feb. 5, 2026) (holding that claims for injunctive and declarative relief, along with damages and attorney fees, remained collateral attacks); *Texas Brine Co. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 484-85, 489 (5th Cir. 2020) (same where plaintiff sought "damages and equitable relief"). Nor does Anthem's demand for prospective relief supply a workaround for it claims. The Fourth Circuit squarely rejected that position in *Center for Excellence in Higher Education, Inc. v. Accreditation Alliance of Career Schools & Colleges*, where the plaintiff sought "prospective injunctive relief" imposing forward-looking due-process protections. 2026 WL 303593, at *8. The court held that the collateral-attack doctrine still applied because—just as with the IDR eligibility determinations here—the arbitrator had already resolved the issue, and courts may not "defy that conclusion and award supposedly independent damages and prospective injunctive relief stemming from that precise…claim." *Id.* And of course, Anthem seeks more than injunctive relief here—it expressly seeks vacatur and millions of dollars of damages. AC ¶¶ 355-359, p. 88.

Fourth, demanding damages for time, fees, and costs incurred during arbitration is also no shortcut to skip the FAA rules. The losing side in an arbitration could say that every time, in every case. To borrow the Ninth Circuit's language from *Sander v.*

Weyerhaeuser Co., though Anthem "uses the guise of an independent suit under [RICO, ERISA, and state] laws…the underlying complaint is that the arbitration award 'was procured by...fraud.'" 966 F.2d at 503 (quoting 9 U.S.C. § 10); *see also Gulf Petro Trading Co. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 750 (5th Cir. 2008) ("Though cloaked in a variety of federal and state law claims, [the plaintiff's] complaint amounts to no more than a collateral attack on the Final Award itself."). Courts rejected this argument in several of the cases that Anthem cites. In *Texas Brine Co. v. American Arbitration Ass'n, Inc.*, the court deemed the claims an impermissible collateral attack even though the plaintiff sought fees and costs paid during arbitration. 955 F.3d at 484-85, 489. Likewise, in *Gulf Petro Trading Co., Inc. v. Nigerian National Petroleum Corp.*, the court rejected a collateral attack where the plaintiff sought arbitration costs, reputational damages, and lost business opportunities suffered as a result of a prior arbitration. 512 F.3d at 749-50.

E. Anthem's complaint fails under Rule 9(b).

Anthem does not dispute that Rule 9(b) applies to fraud claims, but argues that the Court should waive Rule 9(b) here. Opp. 52, 53 n.27. Anthem offers no details or specifics—none—as to the "hundreds" of claims it says are at issue in this case.

In any event, there are no grounds to waive Rule 9(b). It is true that "Rule 9(b) may be relaxed to permit discovery in a limited class of corporate fraud cases where the evidence is within a defendant's exclusive possession." *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 999 (9th Cir. 2010) (quoting *U.S. ex rel. Lee v. SmithKline*

Beecham, Inc., 245 F.3d 1048, 1052 (9th Cir. 2001)). The instant case is the opposite of that. Anthem knows (perhaps better than anyone) the kind of health plan each of its members use (*i.e.*, the reason it asserts that claims were ineligible for IDR). And Anthem knows each of the IDRs that it litigated and lost. There is no reason it could not have submitted a list and other details required under Rule 9(b), except that it chose not to. It would be an error to simply waive a Federal Rule of Civil Procedure in these circumstances.

Nor has Anthem provided particularized "examples" sufficient to lay a complete foundation for the rest of its allegations. *Contra* Opp. 52. Fraud claims "requir[e] a greater degree of pre-discovery investigation by the plaintiff, followed by the plaintiff's required particular allegations, thereby protecting a defendant's reputation from frivolous and unfounded allegations and permitting a particularized basis for a defendant to respond to the particularized allegations." *Irving Firemen's Relief & Ret. Fund v. Uber Techs., Inc.*, 998 F.3d 397, 404 (9th Cir. 2021). Where there are thousands of IDRs between the parties, supposed inaccuracies in four cases do not prove or even suggest fraud—they would be entirely consistent with inadvertent errors (if Anthem is right that they are errors, which is disputed). No arbitration or court proceeding is perfect, and any set containing a large number of cases will also contain mistakes. Even litigation is "occasionally inaccurate." *United States v. Pendergraft*, 297 F.3d 1198, 1206 (11th Cir. 2002). Courts must be cautious in inferring fraudulent intent where lawful conduct is equally plausible or errors may be inadvertent. *In re*

Century Aluminum Co. Secs. Litig., 729 F.3d 1104, 1108 (9th Cir. 2013) ("[P]laintiffs cannot offer allegations that are 'merely consistent with' their favored explanation but are also consistent with the alternative explanation." (citation omitted)); *Guardian Flight*, 140 F.4th at 622 (rejecting fraud claims based on alleged understatement of QPA in IDR where plaintiff "allege[d] nothing to show that [the misstatement] was anything other than an inadvertent error, as opposed to an intentional scheme to mislead").

Anthem asks the Court to flatly ignore a Federal Rule of Civil Procedure. It cites two district court opinions: *Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, 2015 WL 12778048, at *8 (involving "great specificity" across 40 examples of alleged misrepresentations) and *Leprino Foods Co. v. Avani Outpatient Surgical Center, Inc.*, 2023 WL 11066072, at *3 (C.D. Cal. Apr. 26, 2023) (providing "detailed information" including exact dates of purported surgeries, billing information suggesting the surgeries did not actually occur, and patient information showing unrealistic surgery scheduling). Anthem has done none of the things that the plaintiffs did in those cases. Further, unlike those cases, Anthem—not Sound Physicians—has the records of the "hundreds" of IDRs it seeks to vacate (because Anthem has not even said which cases are at issue). And none of this is grounds to disregard Rule 9(b) or the Ninth Circuit's controlling law on this point: a relaxed version of the rule could apply, if at all, only where the facts are within the defendant's control (not the plaintiff's). *Ebeid*, 616 F.3d at 999; *see also Neubronner v. Milken*, 6 F.3d 666 (9th

Cir. 1993) (recognizing that 9(b) may be relaxed where "plaintiffs can not be expected to have personal knowledge of the relevant facts" (citations omitted)).

***F. Noerr-Pennington* requires dismissal.**

Anthem argues that *Noerr-Pennington* is not a basis to dismiss a case at the pleading stage. This is not correct. Courts routinely dismiss cases under *Noerr-Pennington* where, as here, the applicability of the doctrine is clear. *See NM LLC v. Keller*, 2024 WL 4336428, at *3-4 (W.D. Wash. Sept. 27, 2024); *Entrepreneur Media, Inc. v. Dermer*, 2019 WL 4187466, at *3 (C.D. Cal. July 22, 2019).

Next, to evade *Noerr-Pennington*, Anthem's brief portrays IDR as a proceeding "before a private organization" involving "purely private commercial disputes." Opp. 34-37. That characterization contradicts its own pleading, which alleges that "**HHS administers the IDR initiation process**" and that **"[a]ny submission made through this system is a statement made to the federal government**" subject to 18 U.S.C. § 1001. AC ¶ 67 (emphasis added). Indeed, the IDR process is a congressionally mandated, quasi-public arbitration mechanism administered by a federal agency, squarely within *Noerr-Pennington*'s scope.

Anthem's attempt to distinguish domain-name arbitration cases fails. Congress delegated to IDREs authority to resolve disputes under the IDR process just as it did to World Intellectual Property Organization ("WIPO") for domain-name disputes. *See Dean v. Kaiser Found. Health Plan, Inc.*, 562 F. Supp. 3d 928, 934 (C.D. Cal. 2022) ("[T]he U.S. Department of Commerce has delegated authority to resolve disputes over

domain names."). Just like the agencies overseeing IDR, WIPO maintains arbitrator lists for dispute assignments. *WIPO Domain Name Panelists*, WIPO, available at https://perma.cc/TK7U-YSHN (accessed February 20, 2026). And Anthem's assertion that IDR does not involve matters of public concern is belied by its own allegations that the NSA was enacted to remedy a "market failure" with "devastating financial impacts on Americans." AC ¶ 41 (quoting H.R. REP. 116-615, pt. 1, at 52 (2020)).[4]

Anthem also acknowledges that this Court has already applied *Noerr-Pennington* "to conduct directed at the United States Patent and Trademark Office ["USPTO"], a federal government agency." Opp. 35-36 (citing *Entrepreneur Media, Inc.*, 2019 WL 4187466, at *3). Yet Anthem offers no principled reason why communications submitted to HHS should be treated differently from communications to any other federal agency.

Anthem also purports to distinguish *Viriyapanthu v. California* on the basis of purported quotations from that decision: "that OCBA acts with governmental authority," and "that the OCBA arbitrators who decided the arbitration award are actually government officials...." Opp. 36 (quoting *Viriyapanthu v. California*, 2018 WL 6136150, at *10 (C.D. Cal. Sept. 24, 2018)). **Sound Physicians is, however, unable to locate any such quotations within the cited decision**.

[4] 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 at oral argument that the defendants were right. *Dean v. Kaiser Found. Health Plan, Inc.*, 562 F. Supp. 2d 928, 934 (C.D. Cal. 2022).

Finally, Anthem argues that its allegations of "intentional misrepresentations" defeat *Noerr-Pennington* immunity, but this exception to *Noerr-Pennington* immunity can only apply where such alleged intentional misrepresentations "deprive the litigation of its legitimacy." *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 938 (9th Cir. 2006) (citation omitted); *accord Kottle v. Nw. Kidney Ctrs*., 146 F.3d 1056, 1062-63 (9th Cir. 1998). In contrast, this case is about mill-run disputes regarding whether the type of insurance plan at issue qualifies for IDR or not. Any time the parties make opposite arguments on eligibility and the arbitrator resolves them, one side is wrong. That Sound Physicians was supposedly wrong (which is disputed) in four examples does not deprive the NSA system of its legitimacy. Indeed, the arbitrators found that Sound Physicians was right, not wrong. And Anthem's argument requires Anthem to demonstrate that the adjudicator could not "detect the alleged false representation itself." *Aventis Pharma S.A. v. Amphastar Pharms., Inc.*, 2009 WL 8727693, at *13 (C.D. Cal. Feb. 17, 2009). Here, the complaint says the opposite: that Anthem objected and argued why disputes were supposedly ineligible. *See* AC ¶¶ 115, 234, 240, 247. As discussed above, the IDR process gave Anthem a clear opportunity to challenge eligibility, which it did, and arbitrators were required to consider those objections.

G. Anthem's RICO claims fail.

Anthem acknowledges that under the litigation-activities doctrine, "courts generally do not allow litigation filings to serve a basis for RICO predicate acts." Opp. at 46-47 (citing *Kim v. Kimm*, 884 F.3d 98, 103-04 (2d Cir. 2018)). Sound Physicians'

opening brief presented authority confirming that this rule applies to arbitration too. OB 22-23. But Anthem argues that the Court should not apply the doctrine here because the Ninth Circuit has not formally adopted it.

Anthem misapplies the law on this issue. While *United States v. Koziol* holds that *threats* of sham litigation can be prosecuted *criminally* as extortion under the Hobbs Act, it does not reject the litigation-activities doctrine and instead describes favorably the essential purpose of the doctrine in the present context: "ensuring access to the courts, promoting finality, and avoiding collateral litigation." 993 F.3d 1160, 1174-75 (9th Cir. 2021). This is why after that ruling, courts in this circuit have continued to apply that doctrine to dismiss civil RICO claims premised on litigation activities. *See Rose v. Slater, Slater & Schulman, LLP*, 2025 WL 3691864 (C.D. Cal. Nov. 19, 2025), *report and recommendation adopted*, 2026 WL 67236 (C.D. Cal. Jan. 7, 2026); *Acres Bonusing, Inc. v. Ramsey*, 2022 WL 17170856, at *12 (N.D. Cal. Nov. 22, 2022). That doctrine is especially vital here, where allowing RICO claims to proceed would chill parties' ability to access and participate in the IDR process that Congress specifically designed to resolve these disputes. The Ninth Circuit "recognized the arguments and strong policy reasons that counsel caution in civil RICO claims." *Acres Bonusing, Inc.*, 2022 WL 17170856, at *12 (citing *Koziol*, 993 F.3d 1160). Under Anthem's theory, any party that submits a claim to IDR that is resolved against Anthem could face a RICO claim if Anthem disputes the facts the other side submitted.

Anthem also claims that earlier courts did not "consider[] whether the rule should apply to arbitration." Opp. 49 n.23. Not so. In *Republic of Kazakhstan v. Stati*, the court held that "[a] RICO civil suit is not a vehicle to challenge non-frivolous litigation, or in this case, a valid and final foreign arbitral award." 380 F. Supp. 3d 55, 57 (D.D.C. 2019). The court applied the same principle because the alleged predicate acts concerning the prior arbitration "all involve[d] the filing of legal documents and complaints." *Id.* at 61. Likewise, in *Diamond Resorts International, Inc. v. Aaronson*, the court held that arbitration demands that "simply led to Plaintiffs engaging in subsequent arbitrations that might not have otherwise occurred" cannot constitute wire fraud. 2018 WL 735627, at *5 (M.D. Fla. Jan. 26, 2018).

Anthem next claims that the litigation activities exemption *should* not apply because the alleged schemes "involve hundreds of different proceedings and target[] Anthem in addition to other health plans." Opp. 50. For support, it cites *Carroll v. U.S. Equities Corp.*, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020), to argue that the Second Circuit's decision in *Kim v. Kimm* left "open the door for RICO claims premised on abusive litigation activities involving conduct beyond a single lawsuit." Opp. 51. But subsequent rulings foreclose that argument. In *Dees v. Zurlo*, as here, the plaintiff attempted to distinguish *Kim* on the grounds that it involved only one lawsuit, whereas the plaintiff's allegations stemmed from multiple state family and criminal court proceedings. 2024 WL 2291701, at *6 (N.D.N.Y. May 21, 2024). The district

court rejected that distinction, *id.* at *7, and the Second Circuit affirmed. *Dees v. Knox*, 2025 WL 485019, at *2 (2d Cir. Feb. 13, 2025).

Anthem's final response is that the doctrine *should* not apply to IDRs because of Anthem's political arguments about the structure of the NSA. That Anthem does not like the system or would design it differently is not a basis to allow RICO litigation against other participants.

H. Anthem lacks ERISA standing.

Anthem claims standing to bring ERISA claims based on delegated authority to recover overpayments and administer IDR. Opp. 63 (citing AC ¶¶ 33, 361). Yet it says this is the case for only "*certain* ERISA-governed health plans." *Id.* (emphasis added); *see also* AC ¶¶ 31-35, 361. It does not complete the chain by alleging facts to show that the plans that were supposedly defrauded *here* were health plans as to which it has delegated authority. Indeed, Anthem has carefully avoided saying so—which portends that the answer is that they are not.

Anthem pleads that it "administers claims and benefits for several different types of health care plans relevant to this Amended Complaint." AC ¶ 31. Anthem then discusses each of these health care plans. *Id.* ¶¶ 32-34. Of these, only for the "self-funded plans" does Anthem plead that it has been delegated authority "to administer the IDR process on behalf of the plans and discretionary authority to perform other services incident or necessary to Anthem's administration of the IDR process." *Id.* ¶ 33. *Contrast id.*, *with id.* ¶¶ 32, 34. Anthem then carefully avoids pleading that the

"self-funded plans" for which it has allegedly been given such authority are those at issue for the subset of IDR disputes it seeks to overturn. *See id.* ¶¶ 361-367. In short, it is hoping that the Court does not look closely at this issue.

Anthem seeks to avoid its burden to plausibly establish its fiduciary status. It relies upon *Bagley v. KB Home* to argue that the Court should overlook this deficiency at the motion-to-dismiss stage. Opp. 64 n.35 (citing 2008 WL 11340342, at *4 (C.D. Cal. Feb. 22, 2008)). But *Bagley* addressed the sufficiency of allegations establishing *defendants'* fiduciary status, not plaintiffs'. 2008 WL 11340342, at *4. That reflects the reality that information about whether a defendant exercised fiduciary control over a plan "will frequently be in the exclusive possession of the breaching fiduciary." *Concha v. London*, 62 F.3d 1493, 1503 (9th Cir. 1995). This is not such a case, as Anthem (the plaintiff) would have this information.

I. Anthem's state-law claims fail for the reasons set out in the motion to strike.

Anthem's state-law claims fail for reasons set out in Sound Physicians' motion to strike and reply in support of the same, filed together with this brief and incorporated by reference here.

III. CONCLUSION

The Court should grant Sound Physicians' motion to dismiss without leave to amend. While Anthem has requested leave to amend a second time, it has not explained why any changes would address the NSA's jurisdictional bar on judicial review.

Indeed, Anthem has already pleaded itself out of court by acknowledging that the supposed fraud was challenged and contested before the arbitrator. Accordingly, there is no basis for another amended complaint.

Dated: February 24, 2026

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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 6,963 words, which complies with the word limit of L.R. 11-6.1.

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