UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BLUE CROSS BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY, Plaintiff, v. HALOMD, LLC, ALLA LAROQUE, and SCOTT LAROQUE, Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 5:25-CV-132-RWS

REPLY IN SUPPORT OF DEFENDANTS HALOMD, LLC, ALLA LAROQUE, AND SCOTT LAROQUE'S JOINT MOTIONS TO DISMISS PURSUANT TO RULES 12(B)(1) AND 12(B)(6) AND RELATED REQUEST FOR JUDICIAL NOTICE

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INTRODUCTION

Plaintiff BCBSTX's opposition confirms the myriad independent and inherent infirmities that require wholesale dismissal of its claims against Defendants.

Notably, BCBSTX does not contest the public agency records referenced in its pleadings and for which Defendants request judicial notice. Reflecting the comprehensive administrative scheme established by Congress in the No Surprises Act ("NSA"), those records lay out in meticulous detail the multi-step, adversarial IDR Process that mirrors quasi-judicial and arbitral proceedings. In addition to the active roles assumed by the multiple federal agencies in overseeing and administering the IDR Process, the uncontested records also detail the roles of and mandates to the agency-certified IDREs or neutral arbiters. The records show that IDREs are required to review all party submissions in determining IDR eligibility before rendering payment determinations and awards. In turn, under the NSA's express terms, those IDRE determinations ***including eligibility*** are "binding" and "***shall not be subject to judicial review***" except under the narrow arbitration vacatur grounds. As the Fifth Circuit has explained, Congress intended to funnel IDR disputes into administrative proceedings and to close the floodgates of litigation. The Texas IDR Process operates similarly. The Texas Department of Insurance ("TDI") administers the process, appoints arbitrators, and determines eligibility, culminating in binding IDR awards with time-limited judicial review. The key issue in this case is eligibility, which determination is firmly committed to a neutral third party, an IDRE or TDI, by design in both the state and federal processes—contrary to the fiction BCBSTX spins that the IDR Processes are somehow an "honor system" with no independent, third-party review and decision-making involved.

As the undisputed records demonstrate, both parties to the IDR Processes provide the information they have on eligibility to the IDRE. As to the first question of whether the type of health plan at issue for a claim is one for which IDR is available, HaloMD provides (through information provided by the patient, to the provider) what it knows about the plan at issue and attests that, to the best of its knowledge, the claim is eligible. BCBSTX has unique knowledge and

documentation to demonstrate whether the health plan at issue is subject to the IDR Process that HaloMD does not have, and BCBSTX can object and provide that documentation to the IDRE. The certified and independent, neutral arbiter considers the materials provided and determines whether the claim is eligible. Once that determination is made, the IDRE proceeds to review the substantive information about the value of the services provided and selects from one of the parties' offers, as the statute provides. BCBSTX wants this Court to substitute its judgment for that of the IDRE; but more than that, it has mounted a campaign to malign and disparage HaloMD for its efforts to assist providers in obtaining appropriate reimbursement for out-of-network ("OON") services provided to BCBSTX's insureds.

As demonstrated in the Motions to Dismiss and here again, BCBSTX's claims—seeking judicial review of Defendants' IDR submissions and the "over 42,000" eligibility determinations made by IDREs and TDI, despite explicit statutory bars and the presence of independent arbiters and two-sided adversity—are legally improper from every angle and should be dismissed.

ARGUMENT

I. BCBSTX cannot obtain judicial review of any of its claims, which must be dismissed.

Under the NSA, SB 1264, and Fifth Circuit law, BCBSTX fails to state claims that are judicially reviewable, requiring dismissal under Rule 12(b)(1) or 12(b)(6). MTD at 15–19.[1]

Nonetheless, BCBSTX claims, incredibly, that "***nothing*** in the statutory schemes, nor the law … prevents" judicial review of its non-vacatur claims. Opp. at 12 (emphasis added). But BCBSTX's chosen forum, the Fifth Circuit, has specifically analyzed and found that the NSA expressly bars all rights of action beyond the narrow FAA vacatur grounds. The Fifth Circuit has also adopted a collateral attack doctrine that likewise sounds a death knell for BCBSTX's claims.

[1] This Reply cites the Motions to Dismiss (ECF No. 15) and exhibits as "MTD" and "MTD Ex.," BCBSTX's Opposition (ECF No. 21) as "Opp." and the Complaint (ECF Nos. 2, 3) as "Compl."

A. Under the NSA, IDRE eligibility determinations "shall not be subject to judicial review," with one narrow exception not pleaded by BCBSTX.

On the face of the statute, the NSA strictly curtails judicial review, with only one enumerated exception, which BCBSTX has not pleaded or even sought to plead: "A determination of a certified IDR entity under subparagraph (A) … ***shall not be subject to judicial review, except*** in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA]." 42 U.S.C. § 300gg-111(c)(5)(E)(i) (emphasis added). Faced with this explicit language, BCBSTX has only one retort. BCBSTX argues that "subparagraph (A)" addresses only IDRE "payment determinations," and, thus, the NSA is silent on and does not in any way limit judicial review of the IDR eligibility determinations that necessarily precede all IDRE payment determinations. Opp. at 10. BCBSTX's argument fails on multiple fronts.

First, reading subparagraph (A) in full—and in combination with other referenced statutory provisions and case law specifically interpreting the provision—reveals and squarely belies BCBSTX's mischaracterization of subparagraph (A). Using the synonymous terms "qualified" and "applicable," that subparagraph ***twice*** references the eligibility determination that must ***precede*** the payment determination:

> (A) In general. Not later than 30 days after the date of selection of the certified IDR entity ***with respect to a determination for a qualified IDR item or service***, the certified IDR entity shall—
>
> > (i) taking into account the considerations specified in subparagraph (C), select one of the offers submitted under subparagraph (B) to be the amount of payment for ***such item or service determined under this subsection for purposes of subsection (a)(1) or (b)(1), as applicable***; and
> >
> > (ii) notify the provider or facility and the group health plan or health insurance issuer offering group or individual health insurance coverage party to such determination of the offer selected under clause (i).

42 U.S.C. § 300gg-111(c)(5)(A) (emphases added). Specifically, the agencies and BCBSTX both use "qualified" and "applicable" to refer to IDR eligibility. *See* MTD Ex. 3, CMS Parties Guidance, at 17 (describing eligibility as "whether the Federal IDR Process is ***applicable***" (emphasis added));

Compl. ¶ 43 (quoting the eligibility attestation "that ***qualified*** IDR items or services are within the scope of the Federal IDR process" (emphasis added)). And the referenced "subsection (a)(1) or (b)(1)" addresses the services "cover[ed]" by or eligible under the NSA. *See* 42 U.S.C. §§ 300gg-111(a)(1), (b)(1) ("Coverage of Emergency Services" and "Coverage of Non-Emergency Services Performed by Non-Participating Providers at Certain Participating Facilities").

As the statute and subsequent regulations and guidance recognize, an IDRE determines payment only for items or services that it ***first*** determines to be IDR eligible.[2] And that is precisely how courts in this circuit and others have interpreted that provision: under Section 300gg-111(c)(5), "the certified IDR entity determines ***whether*** the parties' dispute ***is eligible for IDR and then*** decides the amount owed to the provider by the insurer." *Guardian Flight LLC v. Health Care Serv. Corp.*, 735 F. Supp. 3d 742, 747–48 (N.D. Tex. 2024), *aff'd*, 140 F.4th 271 (5th Cir. 2025), *cert. denied*, No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) (emphasis added); *see also Worldwide Aircraft Servs. Inc. v. Sec'y of Health & Hum. Servs.*, 763 F. Supp. 3d 1371, 1375 (M.D. Fla. 2025) (same); *Avraham Plastic Surgery LLC v. Aetna, Inc.*, No. 25-CV-784 (OEM) (SDE), 2025 WL 3779084, at *2 (E.D.N.Y. Dec. 30, 2025) (same).

Contrary to BCBSTX's bald statement that "[t]here is no indication" of Congress's intent, Opp. at 10, there is abundant and certainly clear and convincing "indication"—per the statutory language, as confirmed by courts—that IDR eligibility and payment decisions go hand-in-hand "under subparagraph (A)," cannot be bifurcated, and are equally subject to the NSA's judicial review restrictions. The NSA's express language in subparagraph (A) also defeats BCBSTX's argument that IDR eligibility decisions should be treated like arbitrability decisions, Opp. at 12, which are not governed by similar statutory provisions.

But even if, as BCBSTX argues, the NSA only prohibited judicial review of "payment determinations" (which it does not), BCBSTX's claims all in the end challenge IDRE payment determinations for purportedly ineligible claims and seek to recover, and render non-binding and

[2] MTD at 9–10; MTD Ex. 2, CMS IDRE Guidance, at 9, 18; MTD Ex. 3, CMS Parties Guidance, at 9, 17.

unenforceable, those very payment determinations and awards. Compl. ¶¶ 188–98, 253, 341; *see also Novo Nordisk Inc. v. Sec'y United States Dep't of Health & Hum. Servs.*, 154 F.4th 105, 112 (3d Cir. 2025) (barring judicial review because "an argument that CMS did not comply with a statutory mandate in making a particular determination is still a challenge to that determination").

BCBSTX's cited cases do not prove otherwise. BCBSTX cites a number of non-NSA cases deciding judicial reviewability in unrelated statutes and contexts—all while claiming that recent Fifth Circuit case law addressing the exact NSA provision at issue is "unavailing." Opp. at 10–12. Again, the Court need only review that precedent to see that it also dictates dismissal of all claims.

In *Guardian Flight I*, the Fifth Circuit analyzed judicial reviewability under the NSA, in affirming dismissal of provider IDR award enforcement claims. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275–277 (5th Cir. 2025), *cert. denied*, No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) ("*Guardian Flight I*"). The Fifth Circuit found that the "NSA's plain text bars this suit" because the "NSA's structure conveys Congress's policy choice to enforce the statute through administrative penalties, not a private right of action," "together with a strictly limited form of judicial review." *Id.* at 276–277. As the Fifth Circuit explained, "Congress may have judged it better to have an administrative enforcement mechanism handle most award disputes instead of throwing open the floodgates of litigation. … the wisdom of Congress's policy choice is beyond our judicial ken." *Id.* at 277.

In *Guardian Flight II*, the Fifth Circuit reaffirmed its conclusion that the NSA not only "creates no private right of action to challenge IDR awards" but also "***explicitly bars judicial review of those awards***, except with respect to four scenarios incorporated from the FAA." *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 620 (5th Cir. 2025) (*"Guardian Flight II*") (emphasis added). The Fifth Circuit did not limit its ruling to "payment determinations." That the plaintiffs in that case alleged fraud as to the insurers' QPAs, and not eligibility, does not negate the Fifth Circuit's unequivocal interpretation and analysis of the NSA and Congress's intent to strictly limit judicial review of IDR awards. Allowing BCBSTX to relitigate over 42,000 IDR eligibility determinations ***in the face of*** the NSA's explicit prohibition

would unquestionably "throw[] open the floodgates of litigation" and go well "beyond [the courts'] judicial ken." *Guardian Flight I*, 140 F.4th at 277. BCBSTX cites no court, in this circuit or elsewhere, that has condoned non-vacatur claims attacking eligibility determinations. To do so would circumvent the very process the statute creates.

As in *Guardian Flight I*, the Court should dismiss BCBSTX's claims with prejudice, as it has "no cause of action under the NSA" or elsewhere and "do[es] not explain which facts [it] could allege in an amended complaint to" state viable claims. 140 F.4th at 279 n.10.

B. The collateral attack doctrine applies and requires dismissal of all claims.

That BCBSTX brings claims under the guise of RICO and state common laws, instead of directly under the NSA, does not save its claims from dismissal either. Instead, as Defendants have shown, BCBSTX's claims run head first into the Fifth Circuit's collateral attack doctrine, which requires their dismissal. MTD at 17–18. BCBSTX does not contest the doctrine but, instead, claims it is inapplicable. Fifth Circuit precedent, again, handily defeats each of BCBSTX's arguments.

BCBSTX first argues that its claims allege misconduct "beyond the individual IDR proceedings" and thus are not prohibited collateral attacks on the IDR awards. Opp. at 13. Yet, in the very next sentence and consistent with its pleadings, BCBSTX describes the alleged conduct as occurring only within the four corners of the IDR Processes ("a scheme to submit tens of thousands of ineligible claims" and "'delay-and-dump' tactics designed to overwhelm the IDR Processes"), which culminated in IDR awards against BCBSTX. *Id.* Contrary to BCBSTX's unsupported arguments, there is no multi-arbitration exception to the collateral attack doctrine. For example, in *Ibarzabal v. Morgan Stanley DW, Inc.*, the court dismissed a class action seeking to collaterally challenge the defendant's conduct in arbitrations with each class member. 2007 WL 9753006, at *1, 3–4 (S.D.N.Y. Dec. 5, 2007). The court found that the class action vehicle could not avoid FAA Section 10(a)'s narrow vacatur grounds and that the "number of plaintiffs" and arbitrations "does not alter the applicability of the statutory scheme." *Id.* at *4. Nor can BCBSTX avoid the doctrine by labeling the alleged conduct as a "scheme" or "pattern." In *Gulf Petro*, the

plaintiff alleged what can fairly be called a scheme involving "a $25 million bribe to the arbitrators," plus "a variety of business dealings and ex parte communications," undisclosed, between two arbitrators and one of the parties—but that did not remotely deter the Fifth Circuit from dismissing the plaintiff's RICO and state law claims as impermissible collateral attacks. *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 748–49 (5th Cir. 2008).

BCBSTX next argues that it is shielded from the collateral attack doctrine because it seeks damages that are "independent from" and not "the result of any IDR award," including "overhead and resources" and "administrative fees and costs," all from the "Federal and Texas IDR Processes" that are purportedly not recoverable via vacatur. Opp. at 13–14. Setting aside the fact that these "costs" all clearly relate to the IDR awards, BCBSTX conveniently omits that the thrust of its claims is that the alleged misconduct "caused it to wrongly face well over $100 million ***in awards***" and "pay[] tens of millions in ***ineligible awards***." Opp. at 19 (emphasis added); Compl. ¶ 302 (emphasis added). That is, BCBSTX seeks to undo and recover IDR awards it lost, precisely the type of relief barred by the collateral attack doctrine. BCBSTX cannot shield itself by tacking on "costs" and other alleged relief. The Fifth Circuit in *Gulf Petro* dismissed claims that sought recovery of awards plus "costs and expenses of the arbitration"—the same alleged by BCBSTX here. 512 F.3d at 749–50. Leaving no doubt, the Fifth Circuit later reaffirmed that holding, finding that "the fact that the plaintiff sought costs and expenses did not affect our finding that the plaintiff was collaterally attacking the arbitration award." *Texas Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 489 (5th Cir. 2020). The plaintiff in *Texas Brine* similarly alleged harm in part from "wasted money spent on the arbitration," which again did not deter the Fifth Circuit from dismissing those collateral claims. *Id.* BCBSTX's claims should be dismissed too.

Texas Brine likewise defeats BCBSTX's argument that its alleged prospective equitable relief somehow also shields its claims from dismissal. Opp. at 14. There, the Fifth Circuit also dismissed collateral claims seeking "equitable relief." *Texas Brine*, 955 F.3d at 484–85. In any event, on their face, BCBSTX's claims for injunctive relief are either (i) direct attacks on IDR awards that seek to enjoin Defendants from enforcing past IDR awards, or (ii) entirely derivative

of its collateral claims attacking the underlying IDR awards by seeking to prohibit similar IDR claims in the future. Compl. ¶ 341. Neither form of requested injunctive relief is viable. MTD at 40–41. BCBSTX confusingly cites two inapposite out-of-circuit cases where the courts granted preliminary injunctions temporarily staying other private arbitrations between the parties, in order to allow resolution of a common question of law about auto insurance benefits. Opp. at 14. BCBSTX has not sought, and has no grounds to seek, a preliminary injunction here. No basis exists to enjoin HaloMD from participating in and pursuing its provider-clients' rights in the legislatively enacted and mandated IDR Processes.

BCBSTX lastly argues that the collateral attack doctrine only applies to court and arbitral awards and that "courts" have found the IDR Process "to not constitute arbitration." Opp. at 14–15. BCBSTX, however, cites only one court for that proposition, and that case does not support the sweeping line BCBSTX seeks to draw between the IDR Processes and arbitrations. In that case, the court addressed whether other FAA provisions, beyond Section 10(a) and not explicitly incorporated into the NSA, could be implied to govern the IDR Processes in general. *Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *8 (D.N.J. Nov. 3, 2025). In that context only, the court said no and distinguished arbitrations from the IDR Process. *Id.* In fact, it is the common thread of FAA Section 10(a) and its vacatur grounds that extends the collateral attack doctrine from the arbitration context to IDR awards. As the Fifth Circuit has explained, the doctrine exists because the FAA limits judicial review, and "the statutory bases for vacating an arbitrator's award are the only grounds on which a court may vacate an award." *Texas Brine*, 955 F.3d at 489. Because the NSA ***explicitly incorporates FAA Section 10(a)***, the collateral attack doctrine applies to protect against such attacks on IDR awards. In any event, trumping any out-of-circuit unpublished opinion, the Fifth Circuit has likened IDR disputes to arbitrations, finding that IDREs "function more or less exactly like arbitrators." *Guardian Flight II*, 140 F.4th at 623. BCBSTX itself alleges parallels between the two throughout its own pleadings. Compl. ¶¶ 2, 3, 35, 55d, 56, 58, 60, 72, 166, 168, 179, 180, 289c.

In sum, the collateral attack doctrine, articulated by the Fifth Circuit in *Gulf Petro* and

Texas Brine, applies squarely to and requires dismissal of all of BCBSTX's claims.

C. BCBSTX pleads no claims arising from any Texas IDR disputes, which would in any event be barred.

As Defendants initially showed, BCBSTX has not pleaded any alleged fraud or ineligible awards as to any specific Texas IDR disputes. For instance, BCBSTX's allegation that HaloMD entered "fictitious group numbers" in the TDI portal is not tied to any examples or individual Texas IDR disputes. Compl. ¶ 210. Nor is that broad allegation plausible in light of BCBSTX's immediately preceding allegation that the TDI portal knows upfront which group numbers are and are "not regulated by the state." Compl. ¶ 209 (image of TDI portal). But even had BCBSTX stated any Texas IDR claims, Texas law would bar such claims as untimely. MTD at 13, 18–19.

BCBSTX asserts that TDI "determines eligibility," not the arbitrators, and that the 45-day time limit under Texas law applies only to the arbitrator's decision and not to TDI's predicate eligibility decision. Opp. at 15–16 & n.8. Those arguments fail to save its claims.

As an initial matter, BCBSTX's concession—that it is the agency TDI "***who determines eligibility***"—is affirmatively fatal to any claims based on Texas IDR disputes. Opp. at 16 n.8 (emphasis added). BCBSTX also alleges that TDI has intervened and caught purportedly "ineligible claims" from HaloMD. Compl. ¶ 211. If TDI determines and is the gatekeeper for eligibility, as BCBSTX alleges, then that independent state-agency intervention and decision-making negates Article III traceability, and certainly each claim's causation and reliance elements. Further, that intervention clearly confers *Noerr-Pennington* and state-law judicial proceedings privilege protection for HaloMD's petitioning of TDI, which is undisputedly a government actor.

BCBSTX's claims also remain barred by Texas law. Regardless of who decides eligibility, that decision necessarily precedes and leads to the Texas IDR arbitrator's payment decision. *See supra* at 4. Challenging eligibility necessarily seeks to vacate the resulting "arbitrator's decision" predicated on that eligibility and must, therefore, be brought "[n]ot later than the 45th day after the date of an arbitrator's decision." Tex. Ins. Code § 1467.089(b). BCBSTX has not timely filed ***any such claims***. Contrary to BCBSTX's statutory arguments, allowing BCBSTX to seek effective

vacatur of an arbitrator's decision, based on eligibility or other grounds, beyond the 45-day window would eviscerate that express statutory limitation, going against the Texas "Legislature's intent" that "[t]here will be no damages action tried to a jury" and that such determinations "be performed by a subject-matter expert—not an issue to be decided by a jury of laymen." *Texas Med. Res., LLP v. Molina Healthcare of Texas, Inc*., 659 S.W.3d 424, 436 (Tex. 2023).

Any claims by BCBSTX predicated on Texas IDR disputes fail on multiple bases and should be dismissed.

II. The NSA's comprehensive IDR framework displaces BCBSTX's RICO claims and preempts its state law claims.

Allowing BCBSTX to relitigate the eligibility of thousands of IDR disputes by federal RICO and state common law claims would unabashedly conflict with the NSA's explicit narrowing of judicial review to FAA Section 10(a) and Congress's clear objective to prevent that very flood of litigation, as recognized by the Fifth Circuit. Thus, the NSA displaces or preempts all of BCBSTX's claims. MTD at 19–21. BCBSTX's attempted response does not change that.

BCBSTX first complains that the displacement and preemption dismissal grounds "merely repackage" the collateral attack arguments. Opp. at 17. But the doctrines are, of course, legally distinct and provide independent grounds on which the Court should dismiss BCBSTX's claims. Because BCBSTX's non-vacatur claims seek to uproot binding IDR decisions only subject to FAA Section 10(a) vacatur, they are collateral attacks that must be dismissed. Because those same claims also invoke federal and state laws in a way that conflicts with the clear language and objectives of the federally enacted and agency-regulated NSA, they are separately displaced and preempted. That BCBSTX's claims run afoul of all of these doctrines, plus the many others shown by Defendants, simply reflects that its claims are strikingly improper from every angle.

BCBSTX next argues that displacement as to federal statutory claims only applies with regard to federal antitrust claims. Opp. at 17–18. As an initial matter, nothing in the Supreme Court's *Credit Suisse Sec. (USA) LLC v. Billing* decision limits its displacement analysis to antitrust claims. 551 U.S. 264 (2007). Nonetheless, multiple cases easily dispel BCBSTX's

contention. In *Danielsen v. Burnside-Ott Aviation Training Center*, the D.C. Circuit concluded that the comprehensive "statutory scheme for administrative relief set forth by Congress in the [Service Contract Act] ***leaves no room for a RICO action***." 941 F.2d 1220, 1227 (D.C. Cir. 1991) (emphasis added).[3] In *McCulloch v. PNC Bank, Inc.*, the Eleventh Circuit similarly concluded that, "in light of the [Higher Education Act]'s enforcement scheme," the alleged fraud there, "the failure to disclose Stafford Loan information, even if in violation of the HEA, cannot form the basis for a civil RICO claim seeking treble damages and injunctive relief." 298 F.3d 1217, 1227 (11th Cir. 2002). The same analysis applies here, where the NSA likewise sets forth and certainly "envisions a comprehensive administrative rubric" to govern the IDR Processes and the resulting binding decisions. *Danielsen*, 941 F.2d at 1228 (citations omitted). Moreover, in all its blustering, BCBSTX does not address the Supreme Court's relevant displacement factors from *Credit Suisse*, all of which dictate displacement and dismissal of its claims. 551 U.S. at 285; MTD at 19–20.

As for the NSA's preemption of BCBSTX's state law claims, BCBSTX argues that its claims and the NSA's judicial review restriction "do very different things" and thus do not conflict. Opp. at 18. That argument does not withstand even slight scrutiny. BCBSTX seeks to use its state law claims to obtain ***judicial review*** of the IDREs' determinations and ***render non-binding*** the resulting IDR awards, untethered to the FAA vacatur grounds. In other words, they "do" the precise "things" prohibited by the NSA's express mandate that IDRE determinations "under subparagraph (A) … shall not be subject to judicial review, except" in a FAA Section 10(a) vacatur case. *See* Compl. ¶¶ 217–25; *supra* at 3. The Supreme Court directs preemption of state law claims when they "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," clarifying that even "conflicts" that "frustrate" the objective trigger preemption. *Geier v. Am. Honda Motor Co*., 529 U.S. 861, 873 (2000). Congress's objective in the NSA is clear: administratively streamline IDR disputes and close "the floodgates of litigation"—an objective that would be frustrated by lawsuits seeking to relitigate IDR eligibility

[3] Although the D.C. Circuit does not use the term displacement, it notes the interplay with "preemption," and its analysis mirrors the displacement doctrine recognized in the Fifth Circuit. 941 F.2d at 1226–27.

decisions and awards *en masse* as state law claims. *Guardian Flight I*, 140 F.4th 271. Even under BCBSTX's cited cases, its state law claims and the NSA unquestionably "impose conflicting legal frameworks" and "are clearly incompatible." *United States v. Texas*, 794 F. Supp. 3d 427, 438 (W.D. Tex. 2025); *Hinds Cnty. v. Wachovia Bank, N.A.*, 700 F. Supp. 2d 378, 401 (S.D.N.Y. 2010).

For all these reasons, the Court should dismiss all claims as displaced or preempted.

III. BCBSTX has not pleaded, and cannot plead, Article III standing.

BCBSTX's case theory remains the same: as part of the legislatively enacted and mandated Federal and Texas IDR Processes, HaloMD allegedly made false attestations of IDR eligibility ("to the best of [its] knowledge"), Compl. ¶ 50, which independent and objective third parties then reviewed alongside any BCBSTX submissions or objections. Those third parties determined the claims were eligible for IDR and in some cases, chose the provider's offer over BCBSTX's after considering the factors laid out by statute, and BCBSTX and/or its plan sponsors may or may not have paid those awards. As Defendants showed, this theory fails to satisfy Article III's traceability requirement. MTD at 21–23. BCBSTX's arguments in response are unavailing.

Conceding "third-party involvement in the chain of causation," as it must, BCBSTX argues the traceability requirement is still satisfied because it has pleaded that HaloMD's alleged eligibility attestations "had the predictable effect"[4] of causing the independent IDR arbiters to issue ineligible IDR awards against BCBSTX. Opp. at 19–20. Yet BCBSTX cites no pleaded facts in support. Notably, BCBSTX's recently concocted argument that the "IDR Processes operate under an honor system," with no checks, appears nowhere in its pleadings.[5] Opp. at 8. But even if it did, the assertion is beyond the pale and should be rejected as conclusory and wholly implausible, given the sheer abundance of public records establishing the independent eligibility gatekeeping and

[4] This is just the flip side of the standard cited by Defendants, that injuries are "not fairly traceable" when a third party's act is a "necessary" but "uncertain" or unpredictable condition of the alleged harm. *Texas v. United States*, 809 F.3d 134, 160 (5th Cir. 2015).

[5] BCBSTX cites Paragraph 214 for the proposition, but that paragraph in its complaint does not support it at all. *See* Compl. ¶ 214 ("Despite these efforts, HaloMD continues to initiate disputes fraudulently under both the Federal and Texas IDRs, damaging BCBSTX as set forth herein.").

decision making role of IDREs, who are certified by the agencies based on their relevant expertise and who receive and evaluate submissions from both sides—all judicially noticeable facts with no objection from BCBSTX. *See* MTD at 9–11, 21–23; MTD Exs. 3 at 17, 8 at 3. Moreover, the fact that IDREs find ineligibility in some instances despite eligibility attestations debunks BCBSTX's "honor system" fiction. The entire process is set up to review the information submitted by both parties in order to confirm eligibility—or to reject the claim based on the eligibility information before the IDRE. The actions of those third parties inject uncertain determinations and unpredictability that negate traceability. *See* MTD Ex. 8 at 3. BCBSTX cannot simply make things up about the publicly-reported and governmentally-administered IDR Processes to manufacture traceability where there is none.

BCBSTX next argues that its undisputed role in the IDR Processes, of expressly objecting to eligibility before the IDREs ahead of any eligibility determination, is no barrier either because IDREs are not required or "guarantee[d]" to review its submissions. Opp. at 20. This is neither true nor plausible. Agency guidance requires that IDREs "***must review***" not only the initiating party's notification but also "the notification from the non-initiating party claiming the Federal IDR Process is inapplicable" and further confirm eligibility if needed by "request[ing] documentation" from the non-initiating party. MTD Ex. 3 at 17 (emphasis added); MTD Ex. 6 at 10–11, 15. And public reports confirm that IDREs spend considerable time, reportedly "50 to 80 percent of their time," working on eligibility determinations that includes review of both sides' submissions when available. 88 Fed. Reg. 75,744, 75,753.[6]

[6] *See also* "Supplemental Background on Federal Independent Dispute Resolution Public Use Files, January 1, 2025 – June 30, 2025," at 3, https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf ("For all disputes, the certified IDR entity ***must confirm dispute eligibility*** before the dispute can proceed. These reviews involve ***complex eligibility determinations*** that require certified IDR entities to expend considerable time and resources. … To that end, the Departments added data elements to the dispute initiation and IDR entity selection response web forms and directed the parties to attach documents ***supporting or contesting eligibility*** during dispute initiation, to ensure certified IDR entities have all necessary information ***to determine eligibility*** earlier in the process…." (emphases added)). Because BCBSTX itself quotes and references Public Use Files in its pleadings, the court can consider them. Compl. at 22 n.11, 53 n.25; *Sivertson v. Citibank, N.A.*, 390 F. Supp. 3d 769, 780 (E.D. Tex. 2019).

BCBSTX's last argument, that "the IDR awards were *only possible* because of Defendants' misrepresentations," Opp. at 20, also misses the mark. Even as alleged, Defendants' purportedly misrepresented eligibility attestations caused no harm on their own without the further "necessary" yet "uncertain" action and decision-making by the independent third-party arbiters. *Texas*, 809 F.3d 134, 160. For these reasons, BCBSTX's alleged injury is "not fairly traceable," requiring dismissal of all claims under Rule 12(b)(1). *See id.*

As for the Article III injury requirement, BCBSTX continues to skirt the issue of whether it has actually paid any of the IDR awards at issue. Opp. at 21. It also claims it has standing to sue for its third-party plan sponsors but cites non-BCBSTX cases that affirmatively alleged explicit authorization by plan sponsors for those insurers to sue on their behalf; those cases do not broadly hold that all insurers can sue for their plan sponsors absent such authorization. *See Tri State Advanced Surgery Ctr., LLC v. Health Choice, LLC*, 112 F. Supp. 3d 809, 813 (E.D. Ark. 2015) ("Cigna … has alleged that it is a plan fiduciary authorized by the plan (as well as by state law) to bring claims on behalf of the injured plans."). Multiplying its pleading deficiencies, BCBSTX has alleged no sponsor authorizations or actual award payments to support Article III injury for the IDR disputes allegedly underlying its claims. *See* MTD at 23 & n.19.

IV. The *Noerr-Pennington* doctrine requires dismissal of all claims, which all arise in the context of the quasi-judicial, quasi-public, and administrative IDR proceedings.

Because BCBSTX's claims all target HaloMD's eligibility submissions made to agencies and agency-appointed IDREs within the IDR Processes, they all fall squarely within the province of the *Noerr-Pennington* doctrine and should be dismissed. MTD at 24–26. The doctrine extends to not only litigation activity but also petitioning activity before agencies, in quasi-judicial and quasi-public proceedings, and to bar RICO and state law fraud claims. BCBSTX does not contest its breadth, and only asserts two arguments against the doctrine, both of which fail.

BCBSTX first argues that the IDR Processes are "'private adjudications' overseen by private companies." Opp. at 36. The Court need only flip through BCBSTX's own papers to reject this argument. As BCBSTX pleads and states elsewhere in the same brief: the legislatively

mandated Federal IDR Process is "***overseen*** by the Departments of Health and Human Services ('HHS'), Labor ('DOL'), and Treasury." Opp. at 2 (emphasis added); *see also* Compl. ¶¶ 225, 228, 252, 264 (same). That is hardly the same as being "overseen by private companies." Opp. at 36. The Departments, in turn, have ***certified*** a short list of organizations to serve as IDREs to make all Federal IDR determinations. MTD Ex. 5. That government certification is no light task, involving ensuring each IDRE has the requisite experience in arbitration, claims administration, managed care, billing and coding, and health care law, as well as no conflicts of interest, adequate staffing, and fiscal integrity. 42 U.S.C. § 300gg-111(c)(4)(A); 45 C.F.R. § 149.510(e)(2)(i)–(iii), (vi). In no sense are IDREs "privately selected decision-maker[s]," as BCBSTX argues. Opp. at 36.

Parties initiate all IDR disputes through "an online portal created by the Departments." Opp. at 3. As part of the agency-administered process meticulously set forth by statute and regulation, the IDREs then receive and independently review eligibility and payment submissions from the parties, as well as other information and factors, before rendering binding IDR awards. *See supra* at 1–2, 12–13; MTD Ex. 2 at 8–9. Above that, the Departments actively carry out their role of overseeing the IDR Process, frequently issuing guidance documents and regularly publishing detailed reports on numerous aspects of the IDR Process and dispute outcomes. *See* MTD Exs. 1–4, 6–10. TDI similarly oversees, regulates, and administers the Texas IDR Process, including the online portal that intakes all Texas IDR disputes. *See* Opp. at 4. TDI also certifies the IDR arbitrators, and, as BCBSTX asserts, is the one "who determines eligibility." Opp. at 16 n.8. Neither the federal nor Texas government actors are trivial or "ministerial" players.

In short, the IDR Processes are not "private" and instead resemble the agency, administrative, quasi-judicial, and quasi-public proceedings that courts have afforded *Noerr-Pennington* protection. *See* MTD at 24–25 (citing cases). BCBSTX's efforts to distinguish the IDR Processes from arbitrations similarly fail. *See supra* at 8. The Fifth Circuit itself has likened IDREs to "judges and arbitrators," as "neutral arbiters of payment disputes with no stake in the underlying controversy" who "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." *Guardian*

Flight II, 140 F.4th 613, 623. BCBSTX's non-binding authority does not compel a different result.

In seeking to avoid the *Noerr-Pennington* doctrine, BCBSTX lastly argues that simply because BCBSTX has alleged fraud, the doctrine does not apply. Opp. at 37. The Fifth Circuit has not adopted such an exception. *See, e.g.*, *Constr. Cost Data, L.L.C. v. Gordian Grp.* , Inc., 814 F. App'x 860, 868 n.27 (5th Cir. 2020) (per curiam) ("Because the evidence of the Defendants' 'alleged fraud' was properly excluded, we need not decide whether misrepresentations and false statements can be immunized under the Noerr-Pennington doctrine."). And, as clarified by the Ninth Circuit, there is no independent "fraud exception"; instead, it is one "circumstance[] in which the sham litigation exception might apply: … if the allegedly unlawful conduct 'consists of making intentional misrepresentations to the court, litigation can be deemed a sham if 'a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy.'" *Relevant Grp., LLC v. Nourmand*, 116 F.4th 917, 928 (9th Cir. 2024). That is, the fraud must rise to the level of a "sham" to avoid the *Noerr-Pennington* doctrine. That is clearly not the case here, where both parties have the opportunity to submit materials to support their positions to the arbiter—and BCBSTX does not even mutter the word "sham."

The *Noerr-Pennington* doctrine applies and immunizes Defendants' alleged petitioning. No exception applies. All claims can and should be dismissed on this ground alone.

V. The judicial-proceedings privilege applies to dismiss BCBSTX's state law tort claims.

The judicial-proceedings privilege also protects Defendants' alleged acts in the quasi-judicial setting of the IDR Processes and requires dismissal of BCBSTX's claims. MTD at 26–27.

Unable to avoid the privilege, BCBSTX resorts to distorting the law, asserting first that the privilege "*only* applies to judicial proceedings" but then conceding that it can also apply to "quasi-judicial proceedings" but those must involve "communication to the public." Opp. at 37–38. The Court need only review the Texas Supreme Court cases at issue to reject BCBSTX's distortion of law. In *Shell Oil Co. v. Writt*, the court set forth the following standard:

> In Texas, the absolute privilege is also extended to quasi-judicial proceedings and other limited instances in which the benefit of the communication to the general public outweighs the potential harm to an individual.

464 S.W.3d 650, 655 (Tex. 2015). Subsequently in *Landry's, Inc. v. Animal Legal Defense Fund*, the court reiterated that "[t]he privilege can also extend to the right of parties and counsel 'to communicate with [a quasi-judicial body] touching the matters under [its] consideration, just as such persons would have the right to communicate with a court.'" 631 S.W.3d 40, 47 (Tex. 2021) (quoting *Reagan v. Guardian Life Ins. Co.*, 140 Tex. 105, 166 S.W.2d 909, 913 (1942)). Notably, the *Landry's* court did not attach a "benefit" requirement to that "quasi-judicial" extension of the privilege. Thus, under Texas law and contrary to BCBSTX's characterization, the privilege applies to not just judicial proceedings but also "quasi-judicial proceedings." *Shell*, 464 S.W.3d at 655.

As shown above, the IDR Processes central to BCBSTX's claims constitute quasi-judicial proceedings that trigger protection for Defendants' alleged submissions or petitioning under both this Texas law privilege and the *Noerr-Pennington* doctrine. *See supra* at 14 –16.[7]

BCBSTX also incorrectly cites *Shell* for the proposition that the absolute privilege "is lost if abused." Opp. at 38. That statement appears in the court's discussion of a lesser conditional privilege. *Shell*, 464 S.W.3d at 655. By contrast, the judicial-proceedings privilege, as "extended to quasi-judicial proceedings," is unequivocally an "absolute privilege" that is ***not*** lost if abused. *Id.* Because that absolute privilege applies here, all state law tort claims should be dismissed.

VI. BCBSTX fails to plead fraud with particularity under Rule 9(b) for all claims.

Rule 9(b)'s heightened pleading standard requires dismissal of all of BCBSTX's claims, as they all sound in fraud. MTD at 27. BCBSTX, however, only addresses Rule 9(b) as to its

[7] Although not necessary, Defendants' alleged conduct, relating to government processes and the provision and reasonable payment for OON services for insured citizens, also constitutes an instance where the benefit to the public outweighs the potential harm to the individual. Consistent with other cases, the privileged communication must be a "benefit … to the general public," not that, as BCBSTX argues, the communication itself must be made to the public, which would make no sense in the context of a privilege related to proceedings before public officials, not the public. *Shell*, 464 S.W.3d at 655; *see also Bird v. W.C.W.*, 868 S.W.2d 767, 771–72 (Tex. 1994) (concluding similarly); *Reagan v. Guardian Life Ins. Co.*, 166 S.W.2d 909, 913 (Tex. 1942) (same).

common law fraud claim, leaving unopposed and waiving argument on its failure to satisfy Rule 9(b) for its other claims, including its RICO claims predicated on wire fraud. Compl. ¶¶ 286–96.

Indeed, on a motion to dismiss filed by BCBSTX in another matter, this Court dismissed deficient RICO wire fraud and state law fraudulent concealment allegations in a case alleging that BCBSTX and other insurers "engaged in a decades-long conspiracy and scheme to deny the existence of chronic Lyme disease and to prevent" its treatment. *Torrey v. Infectious Diseases Soc'y of Am.*, No. 5:17-CV-00190-RWS, 2018 WL 10124894, at *14 (E.D. Tex. Sept. 27, 2018). The Court found that, although the plaintiffs "allege[d] over 17 acts of mail or wire fraud" and different aspects of the alleged scheme, they "fall short of providing the 'newspaper' details" about "each Defendants' contributions to the fraud," "when the fraudulent communications were made and between whom these communications were made, which Insurance Defendant denied coverage for chronic Lyme disease and when, or which Insurance Defendant reported doctors to medical boards," and "any details establishing which Insurance Defendant made payments to which IDSA Panelist, or the date, location or amounts of those payments." *Id.* Even though the defendants had "exclusive possession of the facts," the Court refused to relax the Rule 9(b) requirements. *Id.* at *15. Here, by contrast, BCBSTX has possession of all of the facts it needs, as a party to each IDR dispute at issue and as shown by its ability to calculate the supposedly "over 42,000" ineligible claims—yet BCBSTX has failed to provide the "newspaper details" necessary to satisfy Rule 9(b).

BCBSTX has not identified close to the detail alleged in *El Paso Disposal, LP v. Ecube Labs Co.*, which included the "generalized and specific dates on which Defendant's employees made the alleged misrepresentations," among others. 766 F. Supp. 3d 692, 708 (W.D. Tex. 2025). For instance, as Defendants showed, with no response from BCBSTX, it alleges no particularized submission of any ineligible Texas IDR disputes. *See supra* at 9; MTD at 18–19 & n.18.

Finally, BCBSTX's arguments confirm its utter lack of particularized allegations as to "each Defendants' contributions to the fraud." *Torrey*, 2018 WL 10124894, at *14. BCBSTX's own cited case confirms that dismissal was proper of a complaint that "lump[ed] the Defendants

together" and "[did] not differentiate" each defendant's role in the alleged fraud. *Sterett Equipment Co. v. PH Steel, Inc.*, No. 1:22-CV-476, 2024 WL 1179788, at *15 (E.D. Tex. Mar. 19, 2024). The allegations are particularly lacking and conclusory as to the two individual defendants whose alleged participation boils down to their mere founding and ownership of entities. Opp. at 23. Under BCBSTX's theory as pleaded, founding and owning a company can give rise to liability for the company's acts because the owners and founders generally oversee and allow the company to function. As shown below, that is not the law. All claims should be dismissed under Rule 9(b).

VII. BCBSTX's bare and conclusory claims against the individuals should be dismissed.

In defending its claims against the individuals, BCBSTX again confirms that its allegations against them amount to no more than generalized assertions that they direct and "control the operations of HaloMD" and "developed a business model." Opp. at 27–29.

Courts consistently reject individual liability claims that, like BCBSTX's, rest on status and conclusory labels rather than factual allegations of direct, personal wrongdoing. In *MVConnect, LLC v. Recovery Database Network, Inc.*, the court dismissed claims against corporate officers because plaintiffs "alleged that these two individuals were the 'guiding spirit' of the alleged conspiracy, ***but they have not alleged any facts regarding their personal participation***." No. 3:10-CV-1948, 2011 WL 13128799, at *10 (N.D. Tex. May 27, 2011) (emphasis added and citation omitted). Similarly, in *Chandler v. Phoenix Services*, the court held that allegations that a CEO "would also have been aware" of wrongful conduct were "a mere suggestion of what [he] likely knew or should have known—not a factual allegation regarding his 'direct role.'" 419 F. Supp. 3d 972, 988–89 (N.D. Tex. 2019). And in *Addison v. Allstate Insurance Co.*, the court found no individual liability where the plaintiff "merely alleged, in vague and conclusory fashion," that the defendant "participated" in wrongful conduct, but "failed . . . to plead any facts delineating the nature of this 'participation.'" 58 F. Supp. 2d 729, 732–33 (S.D. Miss. 1999). The cases cited by BCBSTX hold no different, but rather also require "direct, personal

participation in the tort," which BCBSTX has not pleaded here. *See Mozingo v. Correct Manufacturing Corp.*, 752 F.2d 168, 174 (5th Cir. 1985).

BCBSTX's allegation that TDI met with defendant Alla LaRoque also does not reflect any participation in purported fraud, where BCBSTX alleges that TDI met with HaloMD to stop the alleged fraudulent submission of "ineligible claims to the Texas IDR process." Compl. ¶ 211. Just because a CEO meets with a regulator to discuss ***alleged*** misconduct does not mean the CEO is somehow individually liable for that conduct.

BCBSTX has no well-pleaded or legitimate basis to name the LaRoques personally in this suit. All claims against them should be dismissed.

VIII. Each of BCBSTX's individual claims should be dismissed on additional grounds.

A. BCBSTX does not defend its deficiently pleaded fraudulent inducement claim.

As Defendants showed, BCBSTX's fraudulent inducement claim (Count III) requires that it was "induced to enter into a contract" by fraud. MTD at 31–32 (quoting *Haase v. Glazner*, 62 S.W.3d 795, 798 (Tex. 2001)). Because BCBSTX alleges no "contract," much less one that it was fraudulently induced to enter, and has no response, the Court should dismiss this claim.

B. BCBSTX has not pleaded reliance to sustain its state law fraud-related claims.

Although BCBSTX spends many pages on the reliance element that underlies several of its fraud-related claims (Counts I to III), it does not contest the fundamental requirement that ***it***, as the plaintiff, must have "***actually and justifiably relied upon*** the representation and thereby suffered injury." *Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577–78 (Tex. 2001) (emphasis added). As Defendants already briefed, Texas law requires that level of reliance by the plaintiff even when the alleged fraud is indirectly communicated to the plaintiff via an intermediary, like the various agencies, IDREs, and Texas arbitrators. MTD at 30.

BCBSTX has neither factually nor plausibly pleaded that ***it*** relied on the alleged fraud. Instead, it alleges it knew of the purported fraud from the outset and even exposed it before the IDREs, likewise negating any reliance by those third parties. Compl. ¶¶ 95, 102, 104, 110, 123,

131, 147, 171, 181. BCBSTX also alleges (and shows that it knows) that regulators have purportedly intervened to stop the alleged fraudulent scheme, again negating any actual or justifiable reliance by BCBSTX or those third parties. Compl. ¶¶ 211–12. By contrast, BCBSTX's cited cases involved plaintiffs who received the alleged fraud through an intermediary and believed, and thus relied on, those representations to their detriment. For instance, in *Hawkins v. Upjohn Co.*, the plaintiffs "assert[ed] that the FDA relied on defendants' representations in permitting the distribution of the drugs in question within the United States and that plaintiffs[] relied on the FDA's assessment as to the drugs' safety in choosing to use the drugs." 890 F. Supp. 609, 612 (E.D. Tex. 1994). As pleaded, unlike unwitting consumers, BCBSTX did not ***itself*** believe and rely on the allegedly fraudulent eligibility attestations to do anything to its detriment.

BCBSTX's allegation—that once the alleged fraud caused the IDR Processes to proceed, "BCBSTX was ***forced, by statute***, to rely upon HaloMD's misrepresentations and to participate in the Federal and Texas IDR Processes," *i.e.*, that the NSA "forced" BCBSTX to rely—is conclusory, implausible, and nonsensical. Opp. at 25 (emphasis added). Statutorily required participation in the IDR Processes is not the same as reliance. And herein lies the rub that infects not only reliance but pervades this entire case: all claims emanate from the legislatively mandated, two-sided, adversarial IDR Processes where independent arbiters call strikes in the middle and that simply cannot be forced into the mold of viable fraud and other claims that require reliance.

BCBSTX does not plead reliance, which is another ground on which to dismiss its claims.

C. BCBSTX has not pleaded viable RICO claims.

BCBSTX has failed to adequately plead several elements of its RICO claims, each providing independent grounds on which the Court should dismiss those claims. MTD at 33–39.

1. Submissions in the quasi-judicial IDR Processes are not RICO wire fraud.

BCBSTX does not contest that litigation and arbitration activity—including filings and submissions—cannot constitute the predicate mail or wire fraud necessary to state a RICO fraud claim. MTD at 34; Opp. at 30. Rather, BCBSTX reasserts its "IDR Processes are not like litigation

or arbitration" argument that should be rejected for the same reasons it fails in the contexts of the *Noerr-Pennington* doctrine and judicial-proceedings privilege. *See supra* at 8, 14–17.

Unlike the cases cited by BCBSTX, Opp. at 31, IDR participants do not simply make submissions to a government program that rubber stamps them. IDR Processes are adversarial and involve certified, neutral arbiters determining and rendering binding awards through multi-step proceedings. *See* MTD at 9. Like litigants, providers and insurers have a statutory right to access IDR proceedings, and the IDR Processes provide dissatisfied parties with several remedies, including vacatur claims, reopening and correction procedures, and agency action against any impermissible conduct. And, beyond IDR's established likeness to litigation and arbitration, other compelling reasons also exist to extend the principle to IDR Processes, contrary to BCBSTX's assertions. Opp. at 30. Permitting RICO claims based on allegedly false filings in IDR Processes would (a) undeniably chill legitimate IDR petitioning and access to the IDR Processes, which are legislatively mandated and administratively exclusive, meaning providers have no other avenue to dispute and recover fair OON reimbursement, and (b) throw open the litigation floodgates contrary to Congress's intent and transform RICO into a treble-damages vehicle to relitigate resolved disputes. *Guardian Flight I*, 140 F.4th at 275–277; *Kim v. Kimm*, 884 F.3d 98, 104 (2d Cir. 2018).

Nor can BCBSTX trigger the "corruption" exception by asserting that Defendants' alleged fraud somehow amounts to "corruption of the IDR processes." Opp. at 30. That exception is narrow, highly specific, and ***not pleaded*** here. "[O]nly in [cases where] the litigation activity included bribery" have courts "allow[ed] litigation activity to sustain a civil-RICO action." *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 525 (5th Cir. 2016); *see also United States v. Pendergraft*, 297 F.3d 1198, 1208 (11th Cir. 2002) (same). BCBSTX's attempted invocation of the "multiplicity of wrongful suits" exception also misses the mark. Opp. at 30–31. That exception evaluates whether "a pattern of baseless, repetitive claims" demonstrates that proceedings were filed "not out of a genuine interest in redressing grievances, but as part of a pattern or practice of successive filings undertaken essentially ***for purposes of harassment***." *USS-POSCO Indus. v. Contra Costa Cnty. Bldg. & Const. Trades Council, AFL-CIO,* 31 F.3d 800, 811 (9th Cir. 1994)

(emphasis added). BCBSTX's own allegations foreclose this theory. Of the allegedly 124,000 IDR disputes HaloMD initiated against BCBSTX, BCBSTX challenges only 42,000, roughly one-third. Compl. ¶¶ 88, 153. Where "more than half of all the actions . . . turn out to have merit," that fact "cannot be reconciled with the charge that [defendants] were filing . . . actions willy-nilly without regard to success." *USS-POSCO*, 31 F.3d at 811.

Because Defendants' activities in the quasi-judicial IDR Processes cannot constitute RICO wire fraud and BCBSTX has shown no exception, the Court should dismiss both RICO claims.

2. BCBSTX has not pleaded RICO injury and causation.

Because the RICO injury and causation requirements set a higher bar for plaintiffs than Article III injury and traceability, the same reasons requiring dismissal under Article III apply with stronger force to require dismissal on RICO standing grounds. *See supra* at 12–14; MTD at 35–36. The Fifth Circuit's recent RICO decision, *Allstate Indem. Co. v. Bhagat*, -- F.4th --, 2026 WL 98115 (5th Cir. 2026), provides a stark contrast to this case and further demonstrates the lack of causation pleaded here. In *Allstate*, the plaintiff Allstate alleged that providers and their attorneys presented allegedly fraudulent bills ***directly*** to Allstate as part of settlement negotiations between Allstate and those providers, with Allstate settling as a result. *Id.* at *1. No certified, neutral arbiters receiving submissions from both sides and conducting independent reviews in a proceeding were involved. Nor, unlike this case where BCBSTX admits it supposedly "knew" and thus objected to instances of the alleged fraud, was there any allegation that Allstate "knew about the fraud" when it settled and paid the bills. *Id.* at *4 at n.4. Further, unlike the pleadings here, "Allstate's complaint included a detailed appendix listing the specifics of each allegedly fraudulent billing." *Id.* By contrast, BCBSTX has not adequately pleaded its RICO claims, and they should be dismissed.

3. BCBSTX fails to plead a RICO enterprise.

BCBSTX has not sufficiently or plausibly pleaded either of its alleged RICO enterprises, providing additional grounds on which to dismiss both its RICO claims. MTD at 37–39.

As to its first alleged "HaloMD Enterprise," which is merely defendant HaloMD

"conducted" by the two individual defendants, BCBSTX concedes that if its allegations against the individuals are found inadequate, so too does this enterprise fail. Because that is the case—that BCBSTX fails to factually plead direct, personal participation by the two individuals as shown above—the Court should dismiss the RICO claim based on this "enterprise." *See supra* at 19–20.

As for the second alleged "Out of Network Provider Enterprise," composed of Defendants and OON Providers they generally contract with, BCBSTX pivots almost entirely to allegations about one provider, MPowerHealth Affiliates. Opp. at 34. Yet its allegations only describe routine, innocuous business integration—shared ownership, offices, and personnel—among affiliated companies, and do not detail a single actual agreement or knowing participation by any provider as to a scheme to submit allegedly false eligibility attestations. Compl. ¶¶ 79–82. That is, there are no allegations to "plausibly support the extrapolation that the defendants had formed an enterprise dedicated" to the alleged misconduct, versus perfectly legal business integration, reflecting failure to plead a RICO enterprise. *Crosswell v. Martinez*, 120 F.4th 177, 187 (5th Cir. 2024). Moreover, although BCBSTX asserts that "the majority of the claims for which HaloMD initiates disputes through the IDR Processes are for MPowerHealth Affiliates," there is no allegation that HaloMD submitted ineligible claims on behalf of MPowerHealth, which does not appear in any of its "representative examples," and certainly no allegation that any providers knowingly participated. Opp. at 34. BCBSTX's allegations as to other OON Providers are even more threadbare, detailing no specific actions or knowing participation by those unnamed providers. As the Fifth Circuit has held, "[a]ccusing a group of defendants … without providing any detail as to *how* they acted together, fails to provide a factual basis from which to plausibly infer the connected structure of an association." *Crosswell*, 120 F.4th at 187 (emphasis added).

BCBSTX's failure to allege either enterprise requires dismissal of both RICO claims.

D. BCBSTX has not pleaded a claim for Money Had and Received.

Both sides agree that the equitable "money had and received" claim under Texas law requires that the "defendant holds money which in equity and good conscience belongs to the

plaintiff." *L'Arte De La Mode, Inc. v. Neiman Marcus Grp.*, 395 S.W.3d 291, 296 (Tex. App.—Dallas 2013, no pet.); *see also Allstate Indem. Co*., 2026 WL 98115, at *5 (same; quoted in Opp. at 39).[8] BCBSTX does not dispute that Defendants do not "hold" any of the costs or fees sought by BCBSTX; indeed, agencies and third-party neutrals hold those fees. Instead, BCBSTX claims that HaloMD, and not any of the individual defendants, received "portions" of IDR awards that it or its plan sponsors may or may not have actually paid. Opp. at 39. Of course, forcing a return of those "portions" of binding IDR awards necessarily requires undoing and vacating those awards, further confirming this claim as an unadorned collateral attack that must be dismissed. *See supra* at 6–9. Beyond that, BCBSTX leaves unaddressed Defendants' other challenges to BCBSTX's pleading of this claim under Texas law. MTD at 39–40. The Court should dismiss this claim too.

E. BCBSTX does not plead or defend its claim for declaratory and injunctive relief.

BCBSTX asserts no real substantive defense of its claims for declaratory and injunctive relief, beyond arguing that its requested "prospective relief" that Defendants stop the allegedly illegal conduct is sufficiently "distinct." Opp. at 39. On its face, that relief is duplicative and derivative of BCBSTX's other claims, and "[a] general injunction which in essence orders a defendant to obey the law is not permitted." *Meyer v. Brown & Root Const. Co.*, 661 F.2d 369, 373 (5th Cir. 1981). Just as the Court should dismiss all other claims, it should dismiss these too.

CONCLUSION

For the reasons set forth here and in Defendants' Motions to Dismiss, the Court should dismiss all of BCBSTX's claims with prejudice under Rules 12(b)(1) and 12(b)(6). The Court should also grant Defendants' unopposed judicial notice request.

[8] BCBSTX starts its argument by erroneously citing the standard for and the portion of this case addressing the not-present unjust enrichment claim. Opp. at 38 ("… benefit from another by fraud, duress ….").

Dated: February 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2026, a true and correct copy of the above was served via email through the Eastern District of Texas's CM/ECF system.

/s/ Geraldine W. Young
Geraldine W. Young