IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ANTHEM HEALTH PLANS OF VIRGINIA, INC. D/B/A ANTHEM BLUE CROSS AND BLUE SHIELD and HEALTHKEEPERS, INC., **Plaintiffs,** **v.** **AGS HEALTH, INC., THE SCHUMACHER GROUP OF LOUISIANA, INC. D/B/A SCP HEALTH, THE SCHUMACHER GROUP OF VIRGINIA, INC., INGLESIDE EMERGENCY GROUP, LLC, KINGSFORD EMERGENCY GROUP, LLC, LAKE SPRING EMERGENCY GROUP, LLC, WESTERN VIRGINIA REGIONAL EMERGENCY PHYSICIANS, LLC, and WILDWOOD EMERGENCY GROUP, LLC,** **Defendants.**	**Civil Action No. 7:25-cv-00804** **District Judge: Robert S. Ballou** **Magistrate Judge: Joel C. Hoppe**

REPLY IN SUPPORT OF DEFENDANT AGS HEALTH, LLC'S MOTION TO DISMISS THE COMPLAINT

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INTRODUCTION

Anthem's Opposition confirms that it improperly seeks both a judicial re-rewrite of the No Surprises Act and to re-write its own Complaint. Despite asserting complex federal and state claims against eight different defendants, Anthem's Complaint dedicates just a handful of paragraphs to AGS, which characterize AGS as providing mere "tools" for submitting claims on behalf of others. Compl. ¶¶ 9, 112, 156–58. AGS's Motion to Dismiss demonstrated that these threadbare allegations fall well short of the particularity required by Rule 9(b), which prohibits broadly lumping together defendants in a RICO action. Forced to confront these shortcomings in its Opposition, Anthem attempts to change its story, recasting AGS as a supposed "architect" of a federal RICO scheme. Opp. 12. But the Court must look to the four corners of the Complaint, not belated assertions in briefing, when assessing the motions to dismiss. And Anthem's un-pled leap is an admission that the Complaint fails to state a claim against AGS on its own terms.

More broadly, Anthem's Opposition to Defendants' Motions to Dismiss again illustrates that this action is an attack on the Independent Dispute Resolution process that Congress established through the No Surprises Act ("NSA"). It often reads more like a position statement than a legal brief. But the actual law Congress passed mandates that Anthem's attacks do not belong in this Court. Anthem's claims must be dismissed—they are barred by the NSA itself, collateral estoppel, the Noerr-Pennington doctrine, Rule 9(b), and Anthem's failure to plead the claims' requisite elements.

In the NSA, Congress circumscribed "judicial review" of the "determination" made by the "certified IDR entity": these "shall not be subject to judicial review" except in the very limited circumstances permitted under the Federal Arbitration Act for which the only remedy is vacatur. 42 U.S.C. § 300gg-111(c)(5)(E)(i). Anthem, however, asks this Court to ignore that bar on the basis that Congress, in Anthem's view, meant to *permit* judicial review of all arbitrator

determinations except the final *payment amount*. According to Anthem, then, this Court and others around the country are open to unlimited second-guessing of thousands of individual arbitrators' determinations regarding the IDR eligibility of every individual dispute. That, of course, makes no sense in light of the plain statutory text and the overall statutory and regulatory scheme.

Because its fraud theory requires ignoring both Anthem's obligation to challenge eligibility and arbitrators' responsibility for adjudicating it, Anthem's Opposition misstates the applicable law on both accounts. Although Anthem claims the "[r]egulations state that a health plan **may** submit eligibility objections to HHS through the IDR Portal," Opp. 6 (emphasis added), what the regulation actually states is "if the non-initiating party believes that the Federal IDR process is not applicable, the non-initiating party **must** also provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal." 45 C.F.R. § 149.510(c)(1)(iii) (emphasis added). Anthem may prefer otherwise, but the regulation mandates that the non-initiating party raise any eligibility objections.

Likewise, Anthem would have this Court believe that IDRE arbitrators ignore their duties, arguing that once a provider submits its initiation form "the Departments automatically transmit the dispute to a certified IDRE tasked with making a payment determination." Opp. 1. But IDREs are required to (and do) assess eligibility, as the federal agency administering the process recently reaffirmed: "***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."[1]

[1] AGS's Request for Judicial Notice, Exhibit C, HHS et al., *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 (emphasis added).

These differences between Anthem's characterizations and the reality of the system Congress and federal agencies actually established expose fatal flaws in Anthem's fraud theory. Congress and CMS designed this process for providers and insurers to expeditiously resolve payment disputes and purposely intended the resulting awards to be final and not judicially reviewable—both for efficiency and to avoid swamping federal courts with messy, small-dollar insurance disputes.[2] Anthem—admittedly aware of alleged ineligibility from the beginning—must raise its objections to the IDREs, which necessarily must overrule them before making the payment determinations about which Anthem now complains. Ignoring Congress's dictates, Anthem now reframes these unfavorable arbitration results as a sprawling civil RICO suit, attempting to relitigate binding awards and deter medical providers from using the federally-mandated process in the future. Anthem is not entitled to another bite at the apple. In the end, this Court should not second guess the decisions of independent federal arbitrators in thousands of individual proceedings. Anthem's claims against AGS must be dismissed.

ARGUMENT

I. Anthem Improperly Seeks to Rewrite the NSA via Lawsuit and Mischaracterizes the Scheme It Established.

Throughout Anthem's response are its many criticisms of the comprehensive process

[2] While Anthem complains of a "flood[]" of IDR claims, Opp. 8, the insurer has filed numerous lawsuits in courts around the country seeking to upend the IDR results it dislikes. *See Anthem Blue Cross Life & Health Insurance Co. v. Prime Healthcare Services – St. Francis, LLC*, No. 8:26-cv-00023 (C.D. Cal.); *Anthem Blue Cross Life & Health Insurance Co. v. HaloMD, LLC*, No. 8:25-cv-01467 (C.D. Cal); *Blue Cross Blue Shield Healthcare Plan of Ga., Inc. v. HaloMD, Inc.*, No. 1:25-cv-02919 (N.D. Ga.); *Community Insurance Co. v. HaloMD, LLC*, No. 1:25-cv-00388-MWM (S.D. Ohio); *Blue Cross Blue Shield of Tex. v. Zotec Partners, LLC*, No. 5:25- cv-00186 (E.D. Tex.); *Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, No. 5:25-cv-00132 (E.D. Tex.). Anthem's protest that providers are 'flooding' the IDR system rings hollow when the insurer itself is flooding federal courts with substantially identical lawsuits to undo those very proceedings.

Congress imposed—disparaging the incentives for IDREs, the effectiveness of processes, the thoroughness of reasoning provided for determinations, and the provider-favorable results. *See* Opp. 1–2, 5–8. Anthem recognizes that it loses this case under the law that Congress enacted, so it must try to evade it.

Anthem describes the IDR process as a flawed "honor system," Opp. 4, but Anthem's attacks are policy criticisms of Congress's design choices, not legal justifications for denying dismissal. As courts considering the NSA have recognized, "the wisdom of Congress's policy choice is beyond [courts'] judicial ken." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025) ("*Guardian Flight I*"). Congress "designed the IDR process to create an efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs." *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1119 (11th Cir. 2025) (citation modified). Equally important, Congress did not want litigation, discovery, and trial in federal court over IDREs' "binding" decisions. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).

Anthem's specific criticisms are also unfounded. Anthem contends IDREs "are not neutral parties when evaluating eligibility," Opp. 38, because they "are not paid unless they decide that a dispute is eligible for IDR," Opp. 6. Under Anthem's position, though, every paid arbitrator would be biased against every defendant. That is not the law. Tellingly, Anthem does not seek vacatur under 9 U.S.C. § 10(a)(2) for "evident partiality" of "the arbitrators." Nor could it, as it does not allege that this high bar was met in any of the thousands of arbitrations at issue. *See Reach Air*, 160 F.4th at 1119.

Congress also built in safeguards to ensure procedural integrity: Regulators must ensure that IDREs are free from any conflict of interest with the parties, 42 U.S.C. § 300gg-

111(c)(4)(F)(i)(III), and IDREs must 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). Despite that expertise, Anthem wrongly contends that IDR "bears no resemblance to" arbitration, Opp. 5, even though Anthem itself refers to IDR as "baseball-style dispute resolution," in which disputes are "arbitrated." Compl. ¶¶ 72, 126, 384; *see Reach Air*, 160 F.4th at 1116 (describing NSA IDR as "baseball-style arbitration").[3] As do agency regulations. *See* 45 C.F.R. § 149.510. The only thing "one-sided" about the IDR process, Opp. 29, 48, is Anthem's skewed narrative, which is contradicted by the regulations and agency guidance and Anthem's own pleadings, *see* Mot. 3–6.

Most notably, Anthem had several opportunities to provide IDREs with plan information and documents related to eligibility, *see* Mot. 3–6—which it, not AGS, had—as well as provide reasonable payment amounts—which it apparently failed to do. Anthem's Complaint omits that the IDR process **requires** Anthem to provide documentary evidence if it believes a dispute is ineligible. 45 C.F.R. § 149.510(c)(1)(iii). And even where Anthem now claims it disputed eligibility, Anthem's allegations show that it raised these objections far beyond the applicable deadline. *See* 45 C.F.R. § 149.510(c)(1)(iii). For example, in a dispute where the underlying service occurred on October 5, 2022, and the IDR was timely initiated on January 31, 2023, Anthem did not subject its eligibility objection until October 21, 2024—a delay of over 20 months. *See* Compl. ¶¶ 223-227; *see also* e.g., ¶¶ 266-270 (a delay of 12 months); ¶¶ 235-238 (a delay of

[3] Elsewhere, Anthem affiliates and their counsel, the same counsel as in this case, have forthrightly characterized IDR as "arbitration" producing "arbitration awards." *See Community Insurance Co. v. HaloMD, LLC*, No. 1:25-cv-00388-MWM, Dkt. 25, PageID #132, 149, 158, 161, 203 (S.D. Ohio Sept. 19, 2025); *Anthem Blue Cross Life and Health Ins. Co. v. HaloMD, LLC*, No. 8:25-cv-01467-KES, Dkt. 1, PageID #18, 67, 69 (C.D. Cal. July 7, 2025). Although Anthem attempts to backtrack this concession by altering the language in this most recent iteration of its slew of lawsuits, it cannot avoid that reality through euphemistic pleading substitutions.

9.5 months). An objection raised so far past the deadline is no objection at all.

And despite Anthem's protestations, IDREs "**must** determine whether the Federal IDR Process is applicable. The certified IDR entity **must** review the information submitted in the Notice of IDR Initiation **and the** notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if one has been submitted, to determine whether the Federal IDR Process applies."[4] Anthem had ample opportunity to convince the IDREs, who simply found the insurer's objections and evidence lacking time and time again.

Because the agency guidance is so detrimental to its case, Anthem argues the Court "should disregard" it. Opp. 29. Anthem cannot proceed with claims challenging a federal arbitration process while ignoring the very procedures that govern that process. As the Fourth Circuit has made clear, courts "routinely take judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621–22 (4th Cir. 2017). *See also Doe v. Noem*, 783 F. Supp. 3d 907, 925 n.8 (W.D. Va. 2025) (taking judicial notice of guidance published by DHS).

Anthem's invocation of *Loper Bright* in its effort to avoid the relevant agency guidance is

[4] *See* AGS's Request for Judicial Notice, Exhibit A, HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 17 (Dec. 2023 Update to Oct. 2022 Guidance), https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf (applying to services furnished before October 25, 2022) (emphasis added); and Exhibit B, HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 16 (Dec. 2023 Update to Mar. 2023 Guidance), https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf (applying to services furnished after October 25, 2022). Because Anthem's complaint alleges issues with disputes before and after that date range, both guidance documents are relevant here.

See also AGS's Request for Judicial Notice, Exhibit C, HHS et al., *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.").

also misplaced. Opp. 30. *Loper Bright* held that courts addressing regulatory challenges under the Administrative Procedure Act need not defer to reasonable agency interpretations of ambiguous statutes. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391 (2024). It did nothing to disturb Congress's longstanding power to expressly delegate authority to agencies "to prescribe rules to 'fill up the details' of a statutory scheme[.]" *Id.* at 395; *see Schaffner v. Monsanto Corp.*, 113 F.4th 364, 382 n.9 (3d Cir. 2024) (upholding EPA's ability to prescribe regulations to carry out a statute following *Loper Bright*). Which is exactly what happened here. In the NSA, Congress directed the agencies to "establish" the IDR process "by regulation." 42 U.S.C. § 300gg-111(c)(2)(A). Anthem concedes, as it must, that the agencies carried out this directive with regulations that "direct IDREs to review eligibility[.]" Opp. 2; *see* Compl. ¶ 70. Anthem cannot avoid them by relying on *Loper Bright*.

II. Anthem Improperly Seeks a Do-Over of IDRE Determinations It Lost.

Beyond launching misguided attacks on Congress's process design choices, Anthem's opposition concedes that this lawsuit targets IDR determinations that Anthem already lost. Such collateral litigation is precluded for a host of reasons. First, the NSA's judicial-review bar largely eliminates this Court's subject-matter jurisdiction. Second, issue preclusion prevents Anthem from relitigating eligibility disputes it lost in prior proceedings. Third, *Noerr-Pennington* forecloses Anthem's attempt to impose liability for Defendants' constitutionally-protected petitioning activity.

A. This Court Lacks Subject-Matter Jurisdiction Over Most of Anthem's Claims.

Anthem agrees—as it must—that Congress stated its intent to strip federal courts of jurisdiction to review determinations made in IDR proceedings under § 300gg-111(c)(5)(E)(i). Mot. 12–16. Anthem instead insists that this judicial-review bar created only an "extremely narrow restriction" that applies only to IDREs' "payment" determinations, not any other aspect of

the underlying arbitration process. Opp. 15–17. And Anthem further asserts that this bar can be avoided completely by repackaging its allegations under a different name. Opp. 17–23. Neither argument has merit.

1. The NSA Judicial-Review Bar Applies Here.

Anthem's main response to salvage subject-matter jurisdiction is that Congress somehow only stripped jurisdiction for payment determinations, not underlying eligibility. But Anthem invents this distinction by segregating the IDR process between—on one side—rulings ordering one party to pay the other a certain amount—and on the other—questions like eligibility and everything else. No court has accepted such a made-for-this-litigation-exception to the NSA's broad bar on judicial review or characterized the IDR process in this bifurcated way. This Court should not be the first.

For starters, Anthem improperly attempts to "read[] into the provision a limitation" on a bar to judicial review "the language nowhere mentions." *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016). The text and structure of the NSA reject that approach.

The provision states, "[a] determination of a certified IDR entity under subparagraph (A) . . . shall not be subject to judicial review[.]" 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). This "determination" includes decisions about eligibility because "subparagraph A" of § 300gg-111(c)(5) encompasses all of the IDRE's work. 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. No other section of the statute addresses eligibility rulings. Indeed, if an IDRE determined a dispute was ineligible, it would not select an award. Thus, selecting one of the proposed amounts, as required by the statute, is entirely predicated upon first making an eligibility finding. Nothing in the NSA permits Anthem's attempted evasion of the judicial-review bar. And courts routinely read similar bars to include predicate determinations. *See Novo Nordisk Inc. v.*

Sec'y U.S. Dep't of Health & Hum. Servs., 154 F.4th 105, 112 (3d Cir. 2025) (precluding 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").

Grasping for an opening despite this clear directive, Anthem asserts that the statute does not *specifically* state that determinations concerning IDR eligibility are barred from review. But that omits both the governing regulations and broader statutory context. Congress did specifically provide that the agencies would "establish by regulation" the "dispute resolution process" for this scheme. 42 U.S.C. § 300gg-111(c)(2)(A). That regulatory scheme facilitates the overarching "payment" determination that is binding and excluded from judicial review. *Id.* And it is under this statutory authorization that the agency requires IDREs to determine eligibility as a predicate to issuing awards. *See* 45 C.F.R. § 149.510(c)(1)(v). Anthem cannot deny that IDREs are not only authorized but required to assess and rule on eligibility.[5] That reality further confirms that eligibility determinations—as essential parts of the IDR regulatory process—cannot be second-guessed in court unless they fall within the narrow circumstances Congress permitted. *Cf. Patel v. Garland*, 596 U.S. 328, 344 (2022) (statutory bar on judicial review of a final removal order "also precludes review of [the final order's] factual support" (citing *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 234–36 (2020)).

Finally, the "consequences" further "underscore[] the implausibility of [Anthem's] interpretation." *Van Buren v. United States*, 593 U.S. 374, 393–94 (2021). Anthem does not

[5] Agency guidance also reinforces that IDREs must assess eligibility. *See* AGS's Request for Judicial Notice, Exhibit A, HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 17 (Dec. 2023 Update to Oct. 2022 Guidance), https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf; Exhibit B, HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 16 (Dec. 2023 Update to Mar. 2023 Guidance), https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf.

dispute that Congress sought to help efficiently resolve these "complex[]" out-of-network disputes.[6] S*ee* Mot. 15–16. Nor does Anthem dispute that Congress preferred "an administrative enforcement mechanism" to "handle most award disputes instead of throwing open the floodgates of litigation." *Guardian Flight I*, 140 F.4th at 277. So Congress prudently channeled these disputes into an IDR process that "shall be binding," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), paired with "a strictly limited form of judicial review" for collateral challenges, *Guardian Flight I*, 140 F.4th at 277. Anthem's manufactured exclusion to Congress's jurisdictional restriction would swallow the rule, inviting piecemeal collateral attacks on anything deemed a "non-payment" aspect of the IDR process. Congress imposed no such self-defeating exclusion; this Court should not create one.

And if there were any doubt, Anthem's Complaint makes clear that this case explicitly is a challenge to payment determinations. Compl. ¶ 63 ("Defendants' false statements, attestations, and misrepresentations were aimed at Anthem in order to fraudulently obtain payments from Anthem[.]"). Anthem explicitly (and repeatedly) intertwines its claims on the basis that IDREs awarded "inflated" amounts and the like. *See, e.g.*, *id.* ¶¶ 32, 113, 131, 135, 136, 285. That alone confirms Anthem seeks judicial review barred by the NSA.

2. The Judicial Bar Limits Potential Challenges to Vacatur Claims Alone and Excludes Collateral Attacks Like Anthem's.

Despite the judicial-review bar, Anthem next insists that the "NSA does not incorporate any of the FAA's procedural provisions, much less impose them as exclusive remedies." Opp. 18.

[6] *Supra* AGS Request for Judicial Notice, Exhibit C, HHS et al., *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 (CMS describing the "complexity in determining whether disputes were eligible for the Federal IDR process").

This is a red herring. Whether or not **other** FAA provisions are incorporated, Congress made clear any challenge to a "determination of a certified IDR entity . . . shall not be subject to judicial review, except in a case described in" subparagraph (a) of § 10 of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). That subparagraph provides only that a court "may make an order vacating the award" in certain limited circumstances. 9 U.S.C. § 10(a). So § 10(a) alone sets up the "exclusive" basis for striking down a challenged award. *Ctr. for Excellence in Higher Educ., Inc. v. Accreditation All. of Career Schs. & Colleges*, 166 F.4th 452, 461 (4th Cir. 2026). AGS need not (and does not) invoke any other section to enforce the judicial-review bar. *Contra* Opp. 18–20.

Because all Anthem's claims besides vacatur fall outside § 10(a), the judicial-review bar applies. Indeed, Anthem's affiliate (represented by the same counsel as here) recently made this very point to another federal court: "'[t]he NSA expressly bars judicial review of IDR awards except as to the specific provisions borrowed from the FAA' pertaining to vacatur." *T.V. Seshan, M.D., P.C. v. Bluecross Blueshield Ass'n*, No. 7:25-cv-00499, Dkt. 43 at 6 (S.D.N.Y. July 3, 2025) (emphasis original) (citing *Guardian Flight I*); *see id.* at 8 ("[T]he NSA states that IDR determinations 'shall not be subject to judicial review, except in a case described in' the FAA's vacatur provisions." (citation omitted)). Anthem's affiliate was correct.

Anthem contends that this lawsuit is not actually a collateral attack on the IDR proceedings. Opp. 31–33. But that ignores reality. Anthem's repeated critiques of Congress's scheme—challenging the IDRE's incentives and the propriety of their determinations—confirm that this case is indeed a collateral attack. *See supra* Part I; *see, e.g.*, Compl. ¶¶ 93–101 (critiquing Congress's chosen process as compared to Virginia's chosen process). And Anthem's notable choice to allege "vacatur" in the "alternative" to all other claims, Compl. ¶¶ 370–77—and its concession that this **entire case** falls within the purview of § 10(a)'s categories, Opp. 20–21—puts

it beyond doubt that the judicial-review bar facially applies to what Anthem seeks to achieve with its non-vacatur claims. Compl. Prayer for Relief (seeking "[r]elief from all improperly-obtained NSA IDR awards"); *cf. Tex. Brine Co. v. Am. Arb. Ass'n*, 955 F.3d 482, 489 (5th Cir. 2020) ("Alleging wrongdoing that would justify vacatur is a sign of a collateral attack.").

In fact, the Fourth Circuit reached this same conclusion since AGS filed its motion to dismiss. *Ctr. for Excellence*, 166 F.4th at 461–62. In *Centers for Excellence*, a college lost a "binding" arbitration proceeding against its accrediting body. *Id.* at 456. Undeterred, the college turned to federal court and filed a complaint alleging due process violations and other economic torts as well as a motion to vacate the arbitration award. *Id.* The district court dismissed the complaint as an improper collateral attack on the arbitrator's binding award. *Id.* at 457. The Fourth Circuit affirmed, explaining that "where a claim. . . in substance simply asks that the arbitration award be vacated, [courts should] dismiss the claim as an impermissible collateral attack." *Id.* at 461. The Court considered "the relationship between the alleged wrongdoing, purported harm, and arbitration award," and concluded that the college's impermissible collateral attack could not proceed, as, in relevant part, "the thrust of the alleged wrongdoing in the complaint is that the arbitrator (and the [accrediting body]) refused to consider [the college's] evidence." *Id.*

Anthem's Complaint likewise seeks to undo those IDR awards it lost—while conspicuously leaving undisturbed the awards it won. *See* Compl. ¶ Prayer for Relief. This asymmetry underscores the true nature of Anthem's suit. As in *Centers for Excellence*, Anthem asserts that its fraud allegations support claims for damages and a claim for vacatur. *Id.* ¶¶ 370–77; Opp. 20–21. But this concession is fatal for most of Anthem's claims, as it shows the insurer's allegations fall "squarely within the scope of section 10" of the FAA (the same section incorporated by the NSA) and its exclusive vacatur remedy. *Ctrs. For Excellence*, 166 F.4th at

461 (citation omitted). Moreover, Anthem allegations suggest that IDREs "refused to consider" Anthem's eligibility objections, which caused Anthem to pay ineligible IDR awards.[7] *Id.*; *see* Compl. ¶¶ 128–30; Opp. 6–7. *Centers for Excellence* made clear this supposed error falls under § 10(a) and so cannot support a direct action. 166 F.4th at 461–62.

Anthem retorts that it is seeking some relief beyond what it could have obtained in the underlying IDR proceedings, Opp. 22–23, but that changes nothing. Anthem "may not transform what would ordinarily constitute an impermissible collateral attack into a proper independent direct action by . . . altering the relief sought[.]" *Ctrs. for Excellence*, 166 F.4th at 462 (citation omitted); *see Fakhri v. Marriot Int'l Hotels, Inc.*, 201 F. Supp. 3d 696, 712–718 (D. Md. 2016) (holding the plaintiff's "damages claim, however creatively crafted, . . . [is] no more than an impermissible collateral attack on the [arbitration] award itself" (citation omitted)).

As *Centers for Excellence* explained, Anthem cannot obtain "independent damages and prospective injunctive relief" because those remedies "flow from" "the 'same wrongdoing'" as would otherwise permit vacatur alone. 166 F.4th at 462. Allowing Anthem to seek alternative relief in court would "artificially narrow[] the term 'judicial review' that Congress used in the NSA." *Guardian Flight I*, 140 F.4th at 275 n.3. In sum, this Court lacks subject-matter jurisdiction except over the vacatur claim—the sole (and narrowly circumscribed) avenue Congress provided for challenging IDR proceedings.

[7] If Anthem failed to raise its eligibility objections to the IDREs, it has forfeited the right to challenge those awards on eligibility grounds. "Parties to arbitration proceedings cannot sit idle while an arbitration decision is rendered and then, if the decision is adverse, seek to attack the award collaterally on grounds not raised before the arbitrator." *United Food & Com. Workers, Loc. 400 v. Marval Poultry Co.*, 876 F.2d 346, 353 (4th Cir. 1989) (citation omitted).

B. Issue Preclusion Independently Bars Anthem from Relitigating the IDREs' Determinations.

Even if this Court had subject-matter jurisdiction over Anthem's challenges to IDREs' eligibility determinations, issue preclusion independently forecloses Anthem's improper attempt to relitigate those determinations. Mot. 16–18. Anthem does not dispute that Congress did nothing to disturb the presumption that preclusion applies; indeed, Anthem's many criticisms of IDR again reveal its frustration with Congress's choice to establish IDREs' binding authority. Mot. 16–18. Nor does Anthem dispute that IDRE determinations yielded final judgments. Mot. 17. Anthem's responses on the remaining elements fare no better.[8]

1. Identical Eligibility Issue Raised. Anthem does not deny that it had the requisite information to contest eligibility, that it presented such information during the IDR process, or that IDREs necessarily ruled against Anthem on eligibility for every contested award—each of which yielded a final judgment.[9] Mot. 17.

Anthem's sole response is that it did not argue to arbitrators that Defendants were committing "fraud" related to eligibility. Opp. 31. But Anthem cannot avoid issue preclusion by simply affixing the label "fraud" onto eligibility objections it already raised and lost. The regulatory framework confirms that IDREs necessarily **disagreed** with Anthem's position that these disputes were ineligible. Asking this Court to re-adjudicate those predicate determinations

[8] Anthem complains that Defendants have not submitted any underlying "decision" to support preclusion, Opp. 30, and suggests that this Court should not assume that the IDREs resolve eligibility, Opp. 31. But Anthem elsewhere alleges that many IDRE decisions resolved eligibility against Anthem. *See* Opp. 2, 38, 64; Compl. ¶¶ 110, 130, 139. In fact, Anthem goes so far as to say that IDREs are paid "**if, and only if, they decided eligibility**[.]" Opp. 2 (emphasis added); *see also* Compl. ¶ 128. So the argument is foreclosed by Anthem's own pleadings.

[9] If Anthem failed to present this information to the IDREs in a particular IDR proceeding, it forfeited any dispute about eligibility—and cannot resurrect it now. *See Marval Poultry*, 876 F.2d at 353.

is precisely what issue preclusion forbids.

2. Eligibility Necessary to the Outcome and Resolved. Anthem also does not dispute that IDREs must by law determine that a dispute is eligible before awarding any amount to the Providers. *See* 45 C.F.R. § 149.510(c)(1)(v). Nor does Anthem dispute that it had several opportunities (and obligations) throughout the process to submit information on—and objections to—a given claim's eligibility, Mot. 3–6, as its complaint and response confirm, *see, e.g.*, Compl. ¶ 130; Opp. 6, 11–13, 21, 48. Nor does Anthem deny that IDREs regularly determine that submitted claims are ineligible.

The mere fact that a party's objections were unsuccessful does nothing to show that eligibility is not actually litigated. Again, IDREs **must** determine eligibility for every claim. And it does not matter that IDREs might not provide an explanation on eligibility in every case, as "arbitrators are not required to explain their reasoning" at all. *Warfield v. Icon Advisers, Inc.*, 26 F.4th 666, 673 (4th Cir. 2022) ("It is well settled that arbitrators are not required to disclose the basis upon which their awards are made and courts will not look behind a lump-sum award in an attempt to analyze their reasoning.") (citation omitted).

3. Opportunity to Be Heard. Anthem protests that it did not have a full and fair opportunity to be heard. Opp. 32–36. But the fact that Anthem often lost does not mean that it lacked an adequate opportunity to be heard. Tellingly, Anthem does not allege that IDREs **always** decide eligibility incorrectly, just that Anthem believes that "nearly 60%" of these decisions were errors. Opp. 9. And Anthem does not (and cannot) meaningfully dispute that it had several opportunities in each IDR proceeding to contest eligibility. Nor does Anthem dispute that it—as the insurer with plan information—has an informational advantage over AGS to dispute eligibility and provide relevant information during the IDR process. Anthem cannot identify what

"opportunities" were "unavailable in the first [action]" when it comes to contesting eligibility. Opp. 34 (citation omitted).

Anthem instead recycles the same tired criticisms about IDREs' financial interests and the thoroughness of the proceedings. Opp. 32–36. But those do not negate the many opportunities Anthem had to contest eligibility or the IDREs' obligation to determine the issue in every case. And regardless, the process does impose meaningful checks on impartiality: IDREs are certified; non-initiating parties can object to the IDRE selected for any reason; and CMS will select a randomized IDRE if the parties cannot agree. *See* 45 C.F.R. § 149.510(c)(1)(i), (iv); *see also Avraham Plastic Surgery LLC v. Aetna, Inc.*, 2025 WL 3779084, at *4 (E.D.N.Y. Dec. 30, 2025) (IDRE is "a neutral decisionmaker making a binding judgment to resolve a dispute between two parties," which "makes them virtually indistinguishable from arbitrators and functionally akin to judges").

Anthem cites no authority—or anything about the proceedings—suggesting that issue preclusion is categorically inapplicable under these circumstances.[10] *See In re Gardasil Products Liability Litig.*, 151 F.4th 178, 196 (4th Cir. 2025) ("Issue preclusion applies to determinations made in many kinds of adversarial proceedings, not just traditional litigation in courts[.]"). Proceedings "need not have all the indicia of a trial to have a preclusive effect." *Patricia H. v. Berkeley Unified Sch. Dist.*, 830 F. Supp. 1288, 1301 (N.D. Cal. 1993); *see also B & B Hardware, Inc. v Hargis Industries, Inc.*, 575 U.S. 138, 158 (2015) ("Procedural differences, by themselves,

[10] Anthem's reliance on *Staub v. Nietzel*, Opp. 45, is misplaced because the court was interpreting Kentucky law, not federal law. 2023 WL 3059081, at *5–6 (6th Cir. Apr. 24, 2023). Nor is there any basis to determine that the congressionally-authorized proceedings here are comparable to the Kentucky prison proceedings at issue there. Similarly, Anthem's citation to *PenneCom B.V. v. Merrill Lynch & Co., Inc.*, 372 F.3d 488 (2d Cir. 2004) is inapposite, as the court there analyzed the interplay between collateral estoppel and unclean hands under New York law. Anthem has never asserted unclean hands in this litigation.

[] do not defeat issue preclusion.").[11] The IDR process afforded Anthem notice and an opportunity to argue its position and submit evidence, which caselaw makes clear is sufficient to constitute a "fair opportunity to litigate" for preclusion to apply. *Scott v. Metropolitan Health Corp.*, 2013 WL 4520264, at *10–11 (E.D.N.C. Aug. 23, 2013) (applying preclusion because a "[f]ull and fair opportunity to litigate" does not require a "full evidentiary hearing" but only that which "was contested by the parties and submitted for a determination by the court"). All told, issue preclusion bars all of Anthem's claims beyond the vacatur claim.

C. The *Noerr-Pennington* Doctrine Provides an Independent and Complete Bar to Anthem's Claims.

Nor can Anthem evade Noerr-Pennington's bar to its claims. As made clear in AGS's Motion, the doctrine protects the very type of government petitioning that Anthem attacks here. Although Anthem suggests in passing that *Noerr-Pennington*'s applicability is a fact question inappropriate at this stage, Opp. 23, that is incorrect. Courts apply the doctrine to dismiss claims on the pleadings where the allegations fail to support a *Noerr-Pennington* exception. *Waugh Chapel S., LLC v. United Food & Com. Workers Union Loc. 27*, 728 F.3d 354, 359 (4th Cir. 2013); *see* Mot. 29. Anthem's claims here fall squarely within *Noerr-Pennington*'s protective ambit, and Anthem fails to show that any exception applies. Mot. 27–31. Neither of Anthem's responses establishes otherwise. Opp. 23–38.

1. IDR Proceedings Are First-Amendment Protected.

Anthem wrongly contends that IDR proceedings do not qualify for *Noerr-Pennington*

[11] Anthem cites dicta from a footnote in *Hare v. Simpson*, 621 F. App'x 748 (4th Cir. 2015) to argue that differences in procedure prevent a full and fair opportunity to litigate. The Supreme Court has expressly rejected Anthem's assertion in the context of agency adjudications like IDR proceedings. *See B & B Hardware, Inc.*, 575 U.S. at 158 ("Procedural differences, by themselves, [] do not defeat issue preclusion.").

protection because they are "private payment dispute[s] before private companies," Opp. 24, but its own briefing belies that position. Anthem concedes elsewhere that the IDR process directly involves federal agencies. *See* Opp. 41 ("Before an IDRE is selected, Defendants must unlock the IDR process by deceiving HHS with false attestations of eligibility."). Anthem's characterization of IDREs also contradicts its own Complaint, which allege that "HHS administers the IDR initiation process" and that "[a]ny submission made through this system is a statement made to the federal government." Compl. ¶ 62.

In any event, the IDR process is a congressionally mandated, quasi-public arbitration administered by a federal agency. As the Supreme Court has made clear, *Noerr-Pennington* protection extends to "efforts to persuade an independent decisionmaker." *See Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 506–07 (1988); *see also Pa. State Univ. v. Keystone Alts. LLC*, 2020 WL 4677246, at *3–4 (M.D. Pa. Aug. 12, 2020) (same for dispute-resolution procedures established by government body); *Viriyapanthu v. California*, 2018 WL 6136150, at *7 (C.D. Cal. Sept. 24, 2018) (same); *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*, 189 F. Supp. 2d 385, 392–93 (E.D. Va. 2002) (same). IDREs are certified jointly by CMS, DOL, and Treasury, remain subject to ongoing agency oversight, and are required to submit regular reporting to the government. IDREs thus qualify as "persons []accountable to the public" endowed "with[] official authority," *Allied Tube*, 486 U.S. at 502, which means *Noerr-Pennington* applies to IDR proceedings before them. Anthem's attempt to distinguish IDR proceedings from other forms of government-sanctioned arbitration on the basis of procedural differences finds no support in the caselaw—and for good reason.

Anthem's unpersuasive attempt to distinguish *Eurotech* is illustrative. Opp. 26–27. While Anthem focuses on procedural differences between IDR proceedings and the trademark dispute

procedure in *Eurotech*, Anthem identifies distinctions without legal significance. The *Eurotech* court held that a trademark dispute qualified as a protected petition, even though the proceedings did not take place before a formal government body. 189 F. Supp. 2d at 393. The court focused on the federal government's role in "establishing" the dispute procedure, which gave the proceedings a "quasi-public nature." *Id.* (citation omitted). Given that nature, the court applied *Noerr Pennington*'s protection "to the initiation and maintenance of [these] arbitration proceedings." *Id.*

The critical inquiry under *Noerr-Pennington* is whether the petitioning activity involved governmental authority or official status—that is, the "nature" of the entity receiving the petition, *id.*—not whether the process employed particular adjudicative tools. *See Allied Tube*, 486 U.S. at 502. Here, because the parties did not contract for arbitration, their obligation to participate in IDR and the IDREs' authority to decide disputes necessarily derive from the government.

2. No "Fraud" Exception Applies.[12]

Anthem next contends that an "intentional misrepresentations" exception to *Noerr-Pennington* saves its claims Opp. 27–28. It does not. As Anthem admits, the Fourth Circuit has never adopted such an exception. Opp. 27. Nor has the Supreme Court. *Balt. Scrap Corp. v. David J. Joseph Co.*, 237 F.3d 394, 402 (4th Cir. 2001). Anthem offers no reason why this Court should go where the Supreme Court and Fourth Circuit have not. *See* Opp. 27–28.

Even setting that threshold deficiency aside, Anthem's own allegations affirmatively defeat any potential fraud exception. In dicta, the Fourth Circuit explained that, if it exists, this narrow exception would not apply if the alleged frauds "do not infect the core of a case" such that

[12] Anthem affirmatively disclaims reliance on any variant of the "sham" exception to *Noerr-Pennington*. Opp. 23 n.18 (conceding the sham exception "is not at issue here").

"the outcome would have been the same." *Balt. Scrap*, 237 F.3d at 402 (citation modified). As one court observed in rejecting a nearly identical gambit,

> it is clear that simply alleging fraud will not do. Were this enough, the exception likely would swallow the rule: any losing party in an administrative proceeding could simply file a complaint, identify the statements with which they disagreed, claim that they were fraudulent, and then relitigate the matter in federal court. This would be inconsistent with "broad" petitioning immunities with only one "narrow" exception currently recognized by the Supreme Court[.]

CVB, Inc. v. Corsicana Mattress Co., 604 F. Supp. 3d 1264, 1281 (D. Utah 2022). Courts that recognize this exception thus require, for example, particularized allegations showing 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). After all, fraud cannot exist where the party alleged to have relied on the misrepresentation was aware of the truth. *Reach Air Med. Servs. v. Kaiser Found. Health Plan*, 160 F.4th 1110, 1122 (11th Cir. 2025) (finding plaintiff was not misled in an IDR proceeding because it knew the truth).

Anthem's claims of eligibility misrepresentations cannot satisfy this standard. Anthem concedes it contested eligibility from the start and submitted objections on that basis. *See, e.g.*, Compl. ¶¶ 161–67. Anthem cannot now belatedly claim that the Defendants' supposed misrepresentations "infect[ed] the core" of the proceedings when (according to Anthem) both parties have known the truth the whole time. *Baltimore Scrap*, 237 F.3d at 401–02; *see, e.g.*, Compl. ¶¶ 161–67. And even if IDREs repeatedly ruled against Anthem—or even under Anthem's implausible suggestion that IDREs ignored this allegedly pertinent information in Anthem's objections—that does not mean IDREs lacked the information to assess eligibility statements.

Although Anthem attempts to relegate *EQMD* to irrelevance in a footnote, Opp. 23 n.18, *EQMD* squarely addressed and rejected the very fraud exception Anthem now invokes. 2021 WL 843145, at *6–8 (E.D. Mich. Mar. 5, 2021). Applying the Fourth Circuit's *Baltimore Scrap* dicta,

the *EQMD* court rejected the plaintiff's attempt to invoke the exception because the plaintiff had the "opportunity to" litigate the issue in the prior proceedings. *Id.* at *7. Anthem too had the "opportunity to" and *did* object to eligibility, meaning Anthem's allegations cannot support any potential fraud exception. *Id.*

But even assuming Anthem had adequately pleaded that SCP made intentional misrepresentation to IDREs (which it has not), Anthem nowhere alleges intentional misrepresentations **by AGS**. Mot. 19–23. Stripped of conclusory allegations, Anthem's Complaint fails to identify a **single** knowing misrepresentation traceable to AGS. Just the opposite. The Complaint confines AGS's role to the "means by which the SCP Enterprise floods the IDR process with knowingly ineligible disputes." Compl. ¶ 155. Indeed, Anthem claims the supposedly false "attestations and cover letters" are "signed in the name of SCP employees on behalf of the Provider Defendants." *Id.* ¶ 157; *see, e.g.*, *id.* ¶¶ 165, 175, 184, 191, 197, 203, 209. So while the Complaint alleges AGS used bots as a means to file IDR submissions, *id.* ¶ 156, Anthem never alleges that AGS itself made knowing and intentional misrepresentations to IDREs. This alone establishes that no fraud exception applies to AGS.

III. All of Anthem's Claims Fail on the Merits.

Beyond the fundamental defects above, Anthem's claims falter on the merits for the reasons discussed in AGS's motion to dismiss. Each claim flunks Rule 9(b)'s requirements as against AGS, and each fails for claim-specific reasons as well. Anthem's opposition does not change that conclusion.

A. Anthem's Complaint Falls Far Short of Rule 9(b)'s Demands.

Across the board, Anthem's claims fail Rule 9(b)'s particularity requirements. Anthem's Complaint improperly lumps AGS in with all its co-defendants without regard for the obligation to delineate each defendant's particular alleged conduct. And Anthem asserts that thousands of

individual proceedings were categorically fraudulent, yet provides none of the particularized detail that Rule 9(b) demands to sustain claims of such extraordinary scope. Anthem fails to plead with particularity AGS's role, proximate causation, and Anthem's purported injury. Mot. 18–24; *see also* Mot. 6–11 (highlighting scarcity of allegations against AGS).

The Eleventh Circuit's recent decision in *Reach Air*, 160 F.4th at 1121–23, another NSA case involving fraud allegations, underscores just how far short Anthem's Complaint falls of complying with Rule 9(b). There, as here, the plaintiff failed to identify "precisely what statements" were at issue, the "time and place of each such statement and the person responsible for making . . . them," and "the manner in which" they "misled the plaintiff." *Id.* at 1121 (citation omitted). The Eleventh Circuit affirmed dismissal, noting plaintiff's admission that it "was not misled by" defendant's statements in the NSA arbitration, having "recognized that" the information was inaccurate. Thus, the Court held that plaintiff neither pled with particularity that the "award was procured by . . . fraud" or by "undue means". *Id.* at 1118. Tellingly, Anthem does not even attempt to demonstrate compliance with Rule 9(b) as to the "thousands" of individual, unidentified IDR rulings it challenges. Opp. 58. That silence speaks volumes.

Anthem attempts to paper over these deficiencies by pointing to a handful of "examples." Opp. 42. But examples cannot substitute for the particularized pleading Rule 9(b) requires. And examples or no, "[a] complaint alleging fraud may not group the defendants together." *Iron Workers Loc. 16 Pension Fund v. Hilb Rogal & Hobbs Co.*, 432 F. Supp. 2d 571, 594 (E.D. Va. 2006).[13] Instead, it "must plead and prove each element" of the fraud against each defendant—an

[13] Anthem attempts to distinguish *Iron Workers* as involving a securities claim, *see* Opp. 46 n.36, but the prohibition on group pleading in fraud cases is not specific to securities actions (or any particular type of fraud claim), but a bedrock requirement of Rule 9(b). *See, e.g.*, *U.S. ex rel. Ahumada v. Nish*, 756 F.3d 268, 281 n.9 (4th Cir. 2014) (same for False Claims Act); *Smith v. Chapman*, 2015 WL 5039533, at *7 (W.D.N.C. Aug. 26, 2015) (same for RICO).

"especially important" requirement in "RICO cases where fraud is alleged." *Smith v. Chapman*, 2015 WL 5039533, at *7 (W.D.N.C. Aug. 26, 2015). Anthem's Complaint almost exclusively alleges in blanket fashion that "Defendants" engaged in a racketeering scheme. Compl. ¶¶ 2–11, 109–140. Anthem's response makes no claim that it has pleaded "each element" of fraud against AGS. How could it? The Complaint lacks particularized allegations that AGS knew of false statements,[14] or intended to submit false statements.

The few allegations Anthem levels specifically at AGS only confirm the Complaint's inadequacy. Anthem concedes that AGS simply "handle[s] the actual submission process and interactions with the IDR portal." Compl. ¶ 157. All documentation, however, including "attestations and cover letters," are signed "in the name of SCP employees on behalf of the Provider Defendants." *Id.* Anthem's own authorities recognize that merely "submitting disputes on behalf of the Provider Defendants" is insufficient. *Id.* ¶ 144; *see In re Pac One, Inc.*, 2007 WL 2083817, at *8 (N.D. Ga. July 17, 2007) (finding allegation that defendant "acted pursuant to the instructions of the [other Defendants] in submitting the false certificates" to be "legally insufficient") (citation modified).

Finally, Anthem's attempt to rely on scattered excerpts from an AGS white paper referenced in a footnote in its complaint is improper and, in any event, changes nothing. The Fourth Circuit has made clear that "[l]imited quotation from or reference to documents that may constitute relevant evidence in a case is not enough to incorporate those documents, wholesale,

[14] Anthem's only response is that "AGS was on notice even if communications and objections went to SCP" because it was "integrated" into SCP's systems. Opp. 12 n.8, 46, 53 n.41. But Anthem's Complaint consistently alleges that Anthem directed its communications to agents of SCP. *See generally* Compl. ¶¶ 161–277. Anthem's bald assertion that AGS bears guilt-by-association simply because it "integrated" with SCP is precisely the sort of conclusory allegation that Rule 9(b) prohibits. *See Smith*, 2015 WL 5039533, at *7.

into the complaint." *Goines v. Valley Community Services Bd.*, 822 F.3d 159, 166 (4th Cir. 2016). Anthem's footnoted citation, *see* Compl. ¶ 155 n.41, is precisely the sort of limited reference courts find insufficient for incorporation. *Brown v. Harford Bank*, 2022 WL 657564, at *6 (D. Md. Mar. 4, 2022) (finding a "mere reference" to incident being captured on video to be "not tantamount to incorporating the video into the Amended Complaint"). Accordingly, the Court should disregard Anthem's effort to bolster its opposition with the white paper.

But even if the Court considers the document, it does nothing to salvage Anthem's pleading deficiencies. Anthem invokes language that does not even relate to IDR arbitrations, and instead addresses unrelated "cash consolidation efforts," such as "SCP "mov[ing] from five to two banks." White Paper, Dkt. 51-1 at 5. Nor is there anything improper about AGS "understand[ing]" the process for submitting a reimbursement claim. *Id.* Any entity that "handle[s] . . . the interactions with the IDR portal," would self-evidently need to understand how that portal and process operate. Compl. ¶ 157. Understanding a process is fundamentally different from using the process to commit fraud, and Anthem does not particularly allege that AGS knowingly participated in submitting any alleged false attestations. Stated differently, if a company establishes a software program for businesses to create spreadsheets, that does not mean that it participates in the choices of how that spreadsheet program is used to complete tax returns-whether for good or for bad.

Anthem cannot have it both ways. Having characterized AGS throughout its Complaint as providing mere "tools," *id.* ¶¶ 9, 112, 156–58, Anthem may not now attempt to recast AGS as the "architect" of a federal RICO scheme for the first time in its Opposition. Opp. 12. That belated reinvention of its theory is precisely the sort of shifting allegation that Rule 9(b) is designed to prevent.

B. Anthem Fails to Allege a Civil RICO or RICO Conspiracy Claim.

Anthem's civil RICO claims fail for several reasons. Mot. 24–27. In particular, Anthem cannot overcome the litigation-activities doctrine and lack of proximate causation. Anthem also has failed to allege a RICO conspiracy. Nor can Anthem allege that AGS directed the affairs of any alleged enterprise.

Litigation Activities. Anthem does not dispute that the "overwhelming weight of authority" rejects any attempt to find civil RICO liability based on litigation activities, including for arbitrations. *Pompy v. Moore*, 2024 WL 845859, at *15–16 (E.D. Mich. Feb. 28, 2024) (citation omitted); *see also Kim v. Kimm*, 884 F.3d 98, 104–05 (2d Cir. 2018) (collecting cases). Although the Fourth Circuit has yet to apply the doctrine, district courts throughout the country, including within the Fourth Circuit, have endorsed it. *See, e.g.*, *Carter v. Rogers, Townsend, & Thomas, P.C.*, 2014 WL 800400, at *4 (M.D.N.C. Feb. 28, 2014). Anthem offers no reason for this Court to depart from the plethora of "courts [that] have refused to allow 'litigation activities' such as filing fraudulent documents or engaging in baseless litigation to serve as predicate acts for RICO[.]" *Id.* (citing cases).

None of Anthem's proposed distinctions warrant an exception to the litigation-activities doctrine. Opp. 37–42.

First, Anthem invokes supposed "policy" reasons for manufacturing an exception. Opp. 38–39. But none of Anthem's cases adopted an exception like Anthem proposes, and this Court should not be the first to do so. Indeed, in distinguishing criminal Hobbs Act liability, Anthem's cases noted the relevant "policy concerns" **favor** applying the litigation-activities doctrine to civil RICO claims. *See U.S. v. Koziol*, 993 F.3d 1160, 1174 (9th Cir. 2021); *U.S. v. Pendergraft*, 297 F.3d 1198, 1208 (11th Cir. 2002). As explained, Anthem is wrong that preclusion doctrines do not apply to these proceedings that Congress deemed "binding." *Contra* Opp. 39; *supra* Part II.B.

And Anthem does not dispute that it has refused to invoke the mechanisms that allow it to seek to cure any supposed "jurisdictional error[s]" in the underlying proceeding,[15]—instead seeking the spectacle and perceived leverage of a civil RICO suit. None of this supports a new exception to the litigation-activities doctrine.

Second, Anthem claims that this doctrine does not apply where a party deceives a third party (like HHS). Opp. 40–41. This argument starkly contradicts Anthem's position that this case **does not** involve the federal government for purposes of *Noerr-Pennington*. *See supra* 14–19. In any event, none of its cases support Anthem's proposed exception in this case. Anthem relies principally on *United States v. Lee*, Opp. 40–41, but *Lee* involved documents that the defendants never filed in court and "not at all directed toward influencing the courts[,]" 427 F.3d 881, 890 (11th Cir. 2005). The defendants there never initiated litigation and never intended to do so; rather, filing suit would have hindered their scheme. *See id.* That differs from the allegations here, which all stem from fully-adjudicated IDR proceedings.

Nor does it matter that this case involves multiple litigations rather than just one. *Contra* Opp. 41–42. Subsequent caselaw forecloses that exact argument. In *Dees v. Zurlo*—cited by Anthem—plaintiffs attempted to distinguish *Kim* because it only involved one lawsuit, whereas the plaintiffs' allegations stemmed from multiple proceedings. 2024 WL 2291701, at *5–6 (N.D.N.Y. May 21, 2024). The district court rejected that distinction, holding that RICO claims cannot proceed where the "gravamen of Plaintiffs' complaint concerns [prior] litigation" and

[15] *See* AGS Request for Judicial Notice, Exhibit D, CMS, *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties* 1, 3 (June 2025), https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf. Anthem notes that this technical assistance "is not intended to have the force of law." Opp. 30 n.25. But courts routinely take judicial notice of agency guidance, *see supra* 6, and in any event, Anthem does not deny that it is could seek to re-open the IDR proceedings for purported jurisdictional defects.

"[t]here are no allegations . . . entirely unrelated to litigation." *Id.* at *7. The Second Circuit affirmed, noting that the alleged fraudulent conduct was "directly related to the initiation or continuance of legal proceedings." *Dees v. Knox*, 2025 WL 485019, at *2 (2d Cir. Feb. 13, 2025).[16] So too here. The alleged predicate conduct is all litigation related, so the doctrine applies.

Proximate Cause. Anthem cannot dispute that its civil RICO claim needs "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). Nor can Anthem dispute that neutral IDREs performed an independent investigation, found eligibility satisfied, and then selected the offers at issue—thereby causing the "harm" alleged in this case (rather than preventing that harm). Mot. 23–24. Or that Anthem's own actions (*e.g.*, the offer amounts it submitted) fed into those adverse determinations. *See Reach Air*, 160 F.4th at 1124 (noting that "baseball-style arbitration in IDR means that the selection of [one party]'s figure may have been the result of [the second party]'s offer being unreasonably high"). And even though Anthem criticizes IDREs' incentives, it never claims they were "in on" the fraud. That reality is dispositive here, because "subsequent acts of independent decision-makers . . . may constitute intervening superseding causes that break the causal chain[.]" *Kane v. Lewis*, 604 F. App'x 229, 235 (4th Cir. 2015); *see also Dual Diagnosis Treatment Ctr. v. Centene Corp.*, 2021 WL 4464204, at *2 (C.D. Cal. May 7, 2021) (citing *Galen v. Cty. of Los Angeles*, 477 F.3d 652, 663 (9th Cir. 2007)) (applying such principles in granting motions to dismiss RICO claims).

The deficiencies in Anthem's proximate-cause theory run deeper still. To escape the

[16] Anthem's reliance on *Carroll* is similarly misplaced. Opp. 40–41. *Dees* has overtaken it to the extent Anthem suggests the litigation-activities doctrine applies only to a single underlying litigation, and the case involved predicate activity outside of litigation in any event. *See Carroll v. U.S. Equities Corp.*, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020).

disconnect between the purported injury and AGS's actions, Anthem contends that initiation fees caused injury. Opp. 48. But besides ignoring that filing multiple claims is not illegal, that injects more disconnect from what it must prove for its civil RICO claims—that the harm was caused "by reason of" eligibility misrepresentations. *Albert v. Glob. Tel*Link*, 68 F.4th 906, 910–11 (4th Cir. 2023). Any alleged misstatement in the submission unquestionably did not cause Anthem to pay the fee, as under the applicable procedure the initial fees are due upon filing regardless of whether it succeeds or fails. Anthem's focus on volume and the **filing** of claims makes its proximate-cause link even more attenuated.

Anthem's response changes nothing. None of Anthem's cases hold that proximate cause is satisfied in attenuated circumstances like those here.[17] Opp. 49–52. *Albert*, 68 F.4th 906, on which Anthem relies heavily, Opp. 49–51, did not involve—and thus did not address—an intervening decision by a neutral third party in a position to prevent the harm. Anthem also repeats the same refrain about how IDREs allegedly did not address all of the eligibility information Anthem supplied, supposedly nullifying the IDREs' role as an intervening actor in this multi-step civil RICO theory. *Id.* at 51. But again, Anthem is wrong about IDREs' role in determining eligibility. *See supra* Part II.B.2. Unlike in *Albert* (where the government entities that were "tricked" had no independent investigative role), IDREs are mandated to independently assess

[17] Anthem accuses AGS of "misstat[ing]" the law of proximate cause, citing to *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008). Opp. 49. Not so. In *Bridge*, the Supreme Court held that first-person reliance is not an element of civil RICO claims and, by extension, not a requirement for satisfying proximate cause. 553 U.S. at 659–60. But the Court did not disturb the role that third parties can play in breaking the causal chain. Rather, the Court acknowledged that proximate cause may be absent where a third-party relied on the defendant's attestations and "knew [the] attestations were false" but still ratified the defendant's supposedly fraudulent conduct. *Id.* at 658–59. In those circumstances, the third-party's actions would "constitute an intervening cause breaking the chain of causation between [defendant's] misrepresentations and [plaintiff's] injury." *Id.* at 659. Anthem's citation to *Bridge* is unavailing—and self-defeating.

eligibility and have the authority to dismiss ineligible claims—making them a true intervening decision-maker rather than a mere pass-through. 68 F.4th at 913.

And Anthem's attempt to argue that the "avalanche" of disputes explains its failure to timely object, Opp. 51, does not fix its causation problem. Anthem provides no authority for the proposition that the volume of lawful filings can itself transform otherwise legitimate activity into RICO predicate acts. And it strains credulity that an organization of Anthem's size was simply too overwhelmed to meet its obligation to object under the regulations.

No Directing Affairs of Enterprise. Nor does Anthem demonstrate that AGS "direct[ed] the [alleged] enterprise's affairs." *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). "[S]imply performing services for an enterprise, even with knowledge of the enterprise's illicit nature, is not enough to subject an individual to RICO liability." *Goren v. New Vision Int'l, Inc.*, 156 F.3d 721, 728 (7th Cir. 1998). RICO does not punish the "associate who finds herself the '**unwitting tool of a primary RICO violator**[.]'" *Rivers v. U.S.*, 2020 WL 1443723, at *12 (W.D. Va. Feb. 26, 2020) (emphasis added), *report and recommendation adopted as modified*, 2020 WL 1443173 (W.D. Va. Mar. 24, 2020). AGS's alleged role was purely administrative. In its Complaint (and notably not in its now expanded allegations against AGS in its Opposition), Anthem describes AGS as merely offering "the means by which the SCP Enterprise floods the IDR process." Compl. ¶¶ 155–58. Anthem does not claim that AGS decided what disputes to submit, what the contents of those disputes looked like, or attested to eligibility. *See* Mot. 25–26. Merely "handl[ing] the actual submission process and interactions with the IDR portal[,]" Compl. ¶ 157, is precisely the type of "[f]urnishing [of] ordinary professional assistance" that does not "rise to the level of participation" for RICO liability, *Rivers*, 2020 WL 1443723, at *14 (citation omitted).

RICO Conspiracy. Anthem does not dispute that its RICO conspiracy claim relies on its

ability to plead a RICO claim. *See MSP Recovery Claims, Series LLC v. Lundbeck LLC*, 130 F.4th 91, 106 (4th Cir. 2025). Because Anthem has failed to plead the latter, it has necessarily failed to plead the former.

C. Anthem Fails to Allege a Vacatur Claim.

As explained, the sole avenue Congress provides for parties to seek judicial relief after an IDR loss is through a vacatur claim. Anthem's main response is that other **procedural** requirements under the FAA do not apply. Opp. 18–23, 36–37. But AGS argues that Anthem's claims falter under § 10's **substantive** requirements, which Congress directly incorporated into 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). And courts—even ones cited by Anthem—acknowledge that these substantive requirements (and the case law interpreting them) apply when challenging an IDRE award. *See Reach Air*, 160 F.4th at 1120–24 (incorporating caselaw interpreting the requirements for vacatur under § 10 and the need to satisfy Rule 9(b)). Neither of Anthem's vacatur theories meet the rigorous substantive requirements for upending IDRE determinations.

For the § 10(a)(1) fraud theory, this claim fails if Anthem could have uncovered the purported fraud before the IDR proceedings. Mot. 31–32; *see MCI Constructors, LLC v. City of Greensboro*, 610 F.3d 849, 858 (4th Cir. 2010). And Anthem concedes not only that it could have discovered the supposedly fraudulent facts before the IDR proceedings but that it **did** discover them and objected "often." Opp. 21; *see* Compl. ¶¶ 64–68, 116–19, 130, 161–277. Anthem's response boils down to arguing that courts may probe arbitrations for fraud where the proceedings lacked a "confrontational, adversarial hearing," even when one side brought the supposed fraud to the arbitrator's attention. Opp. 21. Anthem cites no case from the Fourth Circuit adopting this standard, much less justifying a departure from the binding standard articulated in *MCI Constructors*. *See* 610 F.3d at 858 (holding the party seeking review must show the fraud was "not discoverable upon the exercise of due diligence prior to the arbitration"). Its best support

comes from a 2003 California intermediate appellate court decision, Opp. 21 (citing *Pour Le Bebe, Inc. v. Guess? Inc.*, 112 Cal. App. 4th 810, 833 (2003)), which actually affirmed denial of a petition to vacate because the plaintiff "failed to make the showing necessary to vacate the arbitration award." 112 Cal. App. 4th at 837.

Nor should the Court adopt Anthem's expansive standard, which would effectively undo Congress's choice to narrowly limit judicial review of IDR awards. Under Anthem's rule, every dissatisfied party to an IDR proceeding could easily unlock the courthouse doors by spinning a disputed issue into fraud. Here again, Anthem mounts a thinly veiled attack on the IDR system that Congress created. *Supra* Part I. Whether or not Anthem's arguments make sense as a policy matter, they have no place in a vacatur analysis. *See UBS Fin. Servs., Inc. v. Padussis*, 842 F.3d 336, 339 (4th Cir. 2016) ("The scope of judicial review of an arbitration award is among the narrowest known at law.").

For the § 10(a)(4) exceeding-authority theory, the question is whether the arbitrators had **authority** to decide the threshold issue (here, eligibility)—not whether they ruled correctly. Mot. 32–33; *see Three S Del., Inc. v. DataQuick Info. Sys, Inc.*, 492 F.3d 520, 531 (4th Cir. 2007); *see also Reach Air*, 160 F.4th at 1119 (Section 10(a)(4) applies "only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice." (quotation modified)). Any doubt is resolved in favor for upholding the award. *DataQuick Info.*, 492 F.3d at 531. "[A]n arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) (citation omitted). Vacatur thus requires showing that the arbitrator clearly had no authority to decide eligibility, not that they wrongly decided eligibility.

IDREs clearly do have such authority.[18]

D. All of Anthem's Other Claims Fail.

None of Anthem's other claims can proceed for various claim-specific reasons apart from the lack of particularity under Rule 9(b). Mot. 33–37.

1. Anthem Fails to Allege an ERISA Claim.

Anthem likewise failed to plead an ERISA claim predicated on the perceived errors in the IDRE proceedings. Compl. ¶¶ 378–385. As discussed in AGS's opening brief, Congress added the ERISA provisions at issue as part of the NSA, meaning these provisions are subject to the NSA's limits on judicial review. Mot. 33. Anthem replies that ERISA's catch-all cause of action has "no exceptions" and so provides a work-around that allows a court to probe IDRE determinations despite those limits. Opp. 60. Not so. ERISA contains an **identical** limitation on judicial review of IDRE determinations. 29 U.S.C. § 1185e(c)(5)(E)(i) ("A determination of a certified IDR entity . . . shall not be subject to judicial review, except in a case described in" the FAA.). ERISA's "general" cause of action cannot evade this "specific" and express limitation. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

2. Anthem Fails to Allege a Business or Civil Conspiracy Claim.

Anthem's conspiracy claims are ripe for dismissal. Anthem is quick to note that "ill-will, hatred, or spite" is not required to plead a claim for business conspiracy. Opp. 60–61. That is both true and entirely irrelevant. Anthem's conspiracy claims fail because Anthem does not—and

[18] Anthem also contends that *Reach Air* is irrelevant to whether the insurer can challenge IDR awards *en masse* because the case only concerned one IDR award. Opp. 37. But *Reach Air* demonstrates the high bar that plaintiffs must meet to vacate *just one* IDR award. Anthem has not met this standard for any single award, nor can the insurer sidestep this standard by consolidating and challenging an indeterminate number of IDR awards in one complaint. The sum is not greater than the parts.

cannot—allege that AGS acted without "legitimate business purpose." *Peterson v. Cooley*, 142 F.3d 181, 187 (4th Cir. 1998). The IDR process expressly provides for eligibility determinations by the IDREs, *see* 45 C.F.R. § 149.510(c)(1)(v), so participation in IDR arbitration is a "legitimate business purpose" even where eligibility is disputed. *Cf. Qiu v. Huang*, 885 S.E.2d 503, 514 (Va. Ct. App. 2023) ("There can be no conspiracy to do an act which the law allows.").

Nor has Anthem alleged a legally protected interest. Anthem claims an interest in seeking "damages, declaratory, and injunctive relief" for "violations of federal and state laws." Opp. 61. This assertion is as hollow as it is wrong. The right to seek damages is not a legally protected interest in and of itself. Rather, Anthem must allege an interest for which some legal or equitable relief **could serve as a remedy**. Anthem has not. *See supra* Parts II, III.C.

Anthem next claims that "coordinated conduct" can permit inference of a conspiracy. Opp. 62. Yet Anthem does not allege that AGS had any part in the **content** of the IDR submissions. *See supra* Part III.A. Rather, AGS is, in Anthem's words, a "tool[]" for interacting with a portal to submit IDR claims prepared by others. *See* Mot. 26; Compl. ¶¶ 9, 112, 155, 156, 157, 158. Anthem could just as easily accuse SCP's internet provider of such "coordinated conduct.". And AGS's "financial incentives," Opp. 62, are unrelated to IDR outcomes—Anthem does not allege, nor could it, that AGS is paid based on wins or losses in arbitration.[19]

Finally, Anthem's conspiracy claims fail because all its other tort claims fail, as "conspiracy is not independently actionable; rather, it is a means for establishing vicarious liability

[19] Anthem's authority on this point is distinguishable. *See All Business Solutions, Inc. v. NationsLine, Inc.*, 629 F. Supp. 2d 553 (W.D. Va. 2009). There, the plaintiff was the middleman between both co-conspirators in business transactions, and each co-conspirator actively worked to unlawfully cut the plaintiff out of the relationship while continuing to engage in the sales arranged by the plaintiff—thereby each profiting directly from the conspiracy. *Id.* at 556. Anthem does not plead that AGS had anything to profit from the alleged conspiracy as AGS neither gains nor loses anything based on the outcomes of IDR arbitration.

for [an] underlying tort." *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 215 (2014).

3. Anthem Fails to Allege a Virginia Consumer Protection Act ("VCPA") Claim.

Anthem's VCPA claim fares no better. As a threshold matter, Anthem's lead authority on the meaning of "consumer transaction" under the VCPA—a **Virginia** statute—is a California decision applying Indiana law. *See* Opp. 62. That case has no bearing on the analysis here.

Anthem's Virginia cases are equally unavailing. First, none involved representations made as part of federally-sanctioned arbitration proceedings. Indeed, none of Anthem's cited cases involved medical billing disputes of any kind—nearly all concerned misrepresentations related to car sales that directly "enabl[ed]" the consumer transactions at issue. *See, e.g.*, *Garvin v. LBAS, Inc.*, 2025 WL 2956445, at *1, 4 (Va. Ct. App. Oct. 21, 2025) (safety inspector misrepresenting inspection "enable[d]" plaintiff to purchase car). Here, by contrast, the alleged "consumer transactions" at issue—which Anthem identifies as the medical services provided to its insureds—bear no causal relationship to the alleged fraud.[20] *Id.* No patient sought out-of-network services from Defendants because of any purported misrepresentation in an IDR proceeding. *See id.*; Compl. ¶ 313. The alleged misconduct in the IDR proceedings occurred after the medical services were rendered—it could not, by definition, have "enabled" those services. This fundamental disconnect between the alleged fraud and any "consumer transaction" is fatal to Anthem's VCPA claim.

[20] Anthem's only other authority is similarly distinguishable. *See Commonwealth ex rel. Herring v. Teva Pharmaceuticals USA, Inc.*, 107 Va. Cir. 44 (2020). There, the false statements and misrepresentations involved a marketing scheme encouraging doctors to prescribe certain medications, conduct that directly enabled the patients to purchase those drugs. Here, in contrast, none of the alleged fraud caused any consumer to obtain "Defendants' out-of-network services." Compl. ¶ 313.

4. Anthem Fails to Allege Fraudulent Misrepresentation and Constructive Fraud.

Neither do Anthem's fraudulent misrepresentation or constructive fraud claims survive dismissal. Anthem does not dispute that Virginia "requires proof of reliance by the injured party, as opposed to reliance by a third party, in order to maintain an action for fraud." *Bailey v. Ethicon, Inc.*, 2021 WL 2345357, at *6 (W.D. Va. June 8, 2021) (citation omitted). Although Anthem points to other jurisdictions with different rules about reliance, *see* Opp. 64–65, this Court is bound to apply Virginia law to this claim, and Virginia law **explicitly** rejects third party reliance as a basis for fraud. *Richmond Metro. Auth. v. McDevitt St. Bovis, Inc.*, 507 S.E.2d 344, 346 (Va. 1998); *see, e.g.*, *Dickson v. Ethicon, Inc.*, 2020 WL 1492883, at *5 (S.D. W. Va. Mar. 27, 2020).

Dickson is instructive. There, the defendant made alleged misrepresentations to doctors about the safety of a medical device it manufactured. 2020 WL 1492883, at *1–2. In direct reliance on those misrepresentations, the doctors used the unsafe medical devices on their patients, thereby injuring them. *Id.* The plaintiffs sued the manufacturers for fraudulent misrepresentation and constructive fraud, basing their claims on their doctors' alleged reliance. *Id.* Applying Virginia law, the court rejected that theory: "Merely showing that [the plaintiff's] physician relied on defendants' alleged misrepresentations cannot establish the essential element of reliance for fraud, fraudulent concealment, and constructive fraud." *Id.* at *5. Anthem itself cannot show reliance, and alleged reliance by "HHS and the IDREs," *see* Opp. 64, cannot fill the void.

5. Anthem Fails to Allege Conversion.

Anthem's conversion claim fails for several reasons. First, Anthem does not allege that it paid AGS—any payments would have been made to the other Defendants. *See* Mot. 36; *Mich. Mut. Ins. Co. v. Smoot*, 129 F. Supp. 2d 912, 918 (E.D. Va. 2000). While Anthem claims it can plead a conversion claim against AGS based on funds another defendant received, Opp. 67, its authority is wholly distinguishable. *See Cook v. The 1031 Exchange Corp.*, 1992 WL 885015 (Va.

Cir. Ct. Nov. 12, 1992). In *Cook*, a corporation was acting as a trustee, and its officer—acting on the corporation's behalf—converted the plaintiff's funds. *See id.* at *3. Because the officer himself directly converted the funds, he was liable in a personal capacity in addition to the corporation's liability based on his actions. *See id.* Here, Anthem does not allege that AGS converted any funds—either for itself or as a fiduciary of anyone else.

Second, Anthem has no conversion claim because IDR awards entitle the prevailing party to the "right of execution on [the] judgment[.]" *Grayson v. Westwood Bldgs. L.P.*, 859 S.E.2d 651, 679 n.35 (Va. 2021). Anthem responds that an IDR award is not a court order. So what? IDR awards **are** enforceable. *See Guardian Flight I*, 140 F.4th at 277 ("[Congress] empowered HHS to assess penalties against insurers for failure to comply with the NSA. The [CMS], an agency within HHS, has acted on that authority by . . . compelling payors to pay IDR awards where appropriate.") (citation modified). The mere fact that "Congress took a different tack" in its mechanism of enforcement does not diminish the validity of the award. *Id.*

Anthem also contends that the IDR awards are "void *ab initio*." Opp. 67. But Anthem cannot tack on the word "fraud" to every IDR award it loses and thereby hand itself a claim to recover awards it has already paid. Rather, Anthem must plead and prove fraud by following the path Congress established and challenge the IDR awards under § 10 of the FAA. For the reasons already discussed, Anthem has not and cannot meet those lofty standards. *Supra* Part III.C.

IV. Virginia's Anti-SLAPP Statute Entitles AGS to Its Reasonable Attorneys' Fees

In addition to dismissal, the Court should award attorneys' fees pursuant to Virginia's Anti-SLAPP statute. *See* Mot. 38. "Virginia's anti-SLAPP statute is intended to deter lawsuits that are designed to chill speech about matters of public concern." *Minnix v. Sinclair Television Group, Inc.*, 2023 WL 3570955, at *7 (W.D. Va. May 19, 2023) (citation omitted). And chilling speech is precisely what Anthem seeks to accomplish with its slew of RICO claims filed across

the country.[21]

Although when opposing a fee award Anthem claims that there are no "issue[s] of . . . interest to a community," it dedicates much of its Complaint to painting IDR proceedings as a matter of distinct public concern. *See* Compl. ¶¶ 31–36, 78–108; *see also* Opp. 2 (claiming this suit could result in "devastating consequences for health plans and American consumers"). Anthem must agree, then, that the faithful application of the IDR process "involve[s] at least some objective nexus to the public welfare[,]" *Jones v. City of Greensboro*, 2025 WL 969360, at *4 (M.D.N.C. Mar. 31, 2025).

Anthem also claims that the statements at issue are not "petitioning activity" protected by the First Amendment, Opp. 68 n.53, but the Court should reject that argument for the reasons explained above, *see supra* Part II.C. Further, Anthem claims that Virginia's anti-SLAPP statute does not protect statements that a declarant "knew or should have known were false." Opp. 68. Yet Anthem fails to plausibly allege that AGS had any knowledge as to the **contents** of the IDR submissions, let alone their veracity—a fatal gap that renders the anti-SLAPP statute's protection squarely applicable. *See supra* Part III.A. Accordingly, attorneys' fees are proper.[22]

V. Anthem Should Not Be Allowed to Amend to Cure Any Deficiencies.

Anthem should not be allowed to amend its Complaint. To start, Anthem has not complied with the procedural requirements for requesting leave. Fourth Circuit law is clear: Requests to amend tacked on at the end of an opposition to a motion to dismiss do "not qualify as" proper motions for leave to amend. *Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 630 (4th Cir. 2008).

[21] *See supra* note 1.

[22] Anthem also submits that its claims had a "substantial basis in law and fact." Opp. 68 n.54. The Court should find otherwise. Anthem's Complaint fails across the board—substantively and procedurally. As just one example, this Court should find Anthem's claims lack any basis in law based on the NSA's explicit bar for judicial review. *See supra* Part II.A.

So "where . . . the plaintiff fails to formally move to amend and fails to provide the district court with any proposed amended complaint or other indication of the amendments he wishes to make, the district court does not abuse its discretion in failing to give the plaintiff a blank authorization to 'do over' his complaint." *Estrella v. Wells Fargo Bank, N.A.*, 497 F. App'x 361, 362 (4th Cir. 2012) (per curiam) (citation modified).

Anthem "never indicate[s] what amendments [it was] seeking," "never identifie[s] any facts [it seeks] to include in an amendment," and "never identifie[s] any cause of action [it seeks] to add in an amendment." *ACA Fin. Guaranty Corp. v. City of Buena Vista, Virginia*, 917 F.3d 206, 218 (4th Cir. 2019). Anthem's four sentence request at the end of its 70 page opposition is plainly insufficient and improper.

Even had Anthem properly requested it, the Court should still deny leave because amendment would be futile. *Save Our Sound OBX, Inc. v. North Carolina Department of Transportation*, 914 F.3d 213, 228 (4th Cir. 2019). Denial for futility is particularly appropriate where a plaintiff's proposed "amended complaint would not cure the jurisdictional defects with his claims[.]" *Kruise v. Fanning*, 214 F. Supp. 3d 520, 530 (E.D. Va. 2016). Here, jurisdictional defects foreclose Anthem's claims many times over. *See supra* Section II. The defects in Anthem's Complaint are more than drafting errors that can be cured—they are fundamental jurisdictional and legal barriers that no amount of re-pleading can overcome.

CONCLUSION[23]

For these reasons, this Court should dismiss Anthem's Complaint with prejudice.

[23] AGS also incorporates all of the arguments raised by the other Defendants.

Dated: April 10, 2026

JONES DAY

By: */s/ B. Kurt Copper*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2026, a true and accurate copy of the foregoing was filed through the Court's CM/ECF system and will be sent electronically to the registered participants.

/s/ B. Kurt Copper
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