UNITED STATES DISTRICT COURT
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.	Case No.: 7:25-CV-00804

DEFENDANTS PROVIDER ENTITIES' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS THE COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Defendants The Schumacher Group of Louisiana, Inc., 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 (collectively, the "Provider Entities") respectfully submit this reply brief in further support of their Motion to Dismiss the Complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Preliminary Statement

The Opposition Brief filed by Anthem Health Plans of Virginia Inc. d/b/a Anthem Blue Cross and Blue Shield and Healthkeepers, Inc. (together, "Anthem"), much like the Complaint, misuses litigation process and allegations of racketeering to vilify the Provider Entities and chill the volume with which they seek fair payment for emergency medical services provided to Anthem's members when Anthem consistently underpays for those services. It is no secret that Anthem is unhappy with providers' success rate in the federally mandated Independent Dispute Resolution ("IDR") process Congress established to streamline the resolution of payment disputes between insurers and providers, while insulating patients from the fray. But the amount and frequency with which Provider Entities are forced to initiate IDR in response to Anthem's rampant underpayment violates no law or regulation and cannot be the basis from which to infer fraud. Dissatisfied with lobbying Congress about its disappointing loss rate and the perceived flaws in the IDR process, Anthem has filed fraud and racketeering lawsuits against medical providers nationwide, leaning heavily on an implausible and conclusory notion that federally mandated IDR proceedings function as an "honor system," with "no effective verification process" (Opp. Br. at 1), "no safeguards to prevent fraud" (*id.)*, "no meaningful due process for health plans to dispute

eligibility" (*id.* at 6), and no requirement that certified IDR entities ("IDREs") "consider health plan objections" (*id.* at 2).

To maintain this fiction and avoid dismissal of its claims, Anthem's Opposition and Complaint ignore the plain language of federal regulations, which *require* IDREs to determine eligibility in every single IDR proceeding (45 C.F.R. § 149.510(c)(1)(v)) and *require* non-initiating parties, like Anthem, to "provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal by" a certain date (*id.* § 149.510(c)(1)(iii)). The Opposition also asks this Court to disregard various on-point guidance (Opp. Br. at 29), written for IDREs and parties by the Centers for Medicare & Medicaid Services ("CMS"), because it does not fit Anthem's "victim" narrative and is fatal to its claims. Consistent with the regulations, this guidance *requires* IDREs to review information "from the non-initiating party claiming the Federal IDR Process is inapplicable," *requires* non-initiating parties who are disputing eligibility to "notify the Departments by submitting the relevant information through the Federal IDR portal," and provides a mechanism through which a party can seek to re-open closed IDR proceedings if an IDRE makes a "jurisdictional error," such as incorrectly determining eligibility. *See* CMS, Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities, 4.4, Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply (Dec. 2023);[1] CMS, Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties, 5.5, Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply (October 2022);[2] CMS, Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties, Errors Identified After Dispute

[1] https://www.cms.gov/files/document/federal-idr-guidance-idr-entities-march-2023.pdf
[2] https://www.cms.gov/files/document/rev-102822-idr-guidance-disputing-parties.pdf

Closure (June 2025).[3] Finally, Anthem resorts to contradictions, bemoaning a dearth of opportunities to dispute Provider Entities' eligibility attestations while simultaneously alleging the many junctures at which Anthem *did* contest eligibility—facts that run counter to any notion of the requisite reliance on anything fraudulent. *See, e.g.,* Compl. ¶¶ 64, 66, 67, 117, 119, 130.

When one strips away Anthem's false and implausible rhetoric, its claims do not survive. First, Anthem stretches to the breaking point the language of the No Surprises Act ("NSA") to circumvent the law's unassailable bar on judicial review of challenges to arbitration awards that would otherwise require dismissal for lack of subject matter jurisdiction. Anthem argues that the bar applies only to challenges to IDRE decisions on payment amounts, but not to IDRE decisions on eligibility, ignoring that by the plain language of the regulations a claim must be "qualified" – i.e., eligible – as a precondition to any payment determination. Anthem argues for the absurd result that all eligibility determinations be reviewable in federal court, an interpretation that would flood and overwhelm the judicial system with parties second-guessing IDRE eligibility decisions. Anthem's argument is also inconsistent with positions on the bar to judicial review that Anthem and other carriers have taken elsewhere.

Second, Anthem fails to allege the limited grounds for challenging arbitration awards under the Federal Arbitration Act ("FAA"). Anthem's express admission that it *knew* the alleged falsity of and *contested* defendants' eligibility positions in the IDR proceedings by itself requires dismissal of any fraud-based challenges under the FAA. Likewise, Anthem's admission that arbitrators *considered and rejected* its eligibility objections does not mean that arbitrators exceeded their authority, just that they disagreed with Anthem.

[3] https://www.cms.gov/files/document/idr-taerrors-after-dispute-closure.pdf

Third, Anthem is collaterally estopped from contesting the eligibility determinations already made by IDREs as part of fully litigated, predicate findings on payment determinations.

Fourth, with respect to its RICO claims, Anthem's Opposition misplaces reliance on easily distinguishable authorities in arguing for proximate cause and ignores the well-established policy that exempts litigation activities from serving as RICO predicate acts. The Provider Entities have engaged in protected petitioning activity, with no plausible allegation of sham litigation. Anthem also makes no compelling argument for why the Court should treat Congressionally mandated IDR arbitration as different from other litigation activities. Further, as detailed below, many of the authorities on which Anthem relies to establish a RICO pattern support dismissal.

Finally, for the reasons explained below, Anthem has not met the high bar to plead common law fraud and has failed to adequately allege claims of conspiracy, conversion, or violation of the consumer protection act under Virginia state law. For the reasons set forth herein and in the opening motion papers, this Court should dismiss Anthem's Complaint in its entirety.

Discussion

I. Anthem's Selective Application of the NSA's Bar on Judicial Review has no Basis in the Statute or the Law.

A pillar of Anthem's Opposition is an untenable argument that the NSA's bar on judicial review applies only to IDRE payment determinations, not to eligibility determinations that Anthem says are the bases for its action. This argument is but a clever attempt to obfuscate the unavoidable truth that Anthem is waging an attack *on the awards themselves*. The Complaint expressly disputes the amount of certain awards as "commercially unreasonable"; it claims as damages those awards it has already paid to the Provider Entities pursuant to IDRE determinations; and it asks this Court to set aside (or decline to enforce) awards already entered against it but not yet paid. *See, e.g.,* Compl. ¶¶ 113, 336, 371, Prayer for Relief; Opp. Br. at 14. In other words, Anthem is in fact

challenging payment determinations, even if in part on eligibility grounds, and such challenges fall squarely within the provision of the NSA that bars judicial review, even under Anthem's unreasonably narrow interpretation.

The plain language of the NSA does not support Anthem's unnatural reading of the judicial review provision either. Neither the NSA nor the implementing regulations split IDRE determinations into "reviewable" and "unreviewable," and a payment determination cannot happen in the absence of an eligibility determination. The judicial review provision states that: "[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 title 9." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). But contrary to Anthem's argument (*see* Opp. Br. at 16), subparagraph (A) does not reference *only* an IDRE's decision to "select one of the offers submitted . . . to be the amount of payment." It *also* references a "determination ***for a qualified*** IDR item or service." 42 U.S.C. § 300gg-111(c)(5)(A) (emphasis added). A "qualified" IDR item or service is one that is ***eligible*** for federal IDR because it is, among other things, not subject to a state balance billing law. 45 C.F.R. § 149.510(a)(2)(xi)(A). In other words, eligibility is an element of a payment determination, and the judicial review bar applies with equal force to an IDRE's threshold eligibility determination.

Anthem's effort here to manufacture a carve-out to the NSA's bar on judicial review, which would then permit certain challenges to awards, would also lead to an absurd outcome and upend the NSA's statutory and regulatory framework. Congress's explicit intent in passing the NSA was to create an efficient forum to adjudicate specialized insurance disputes without "throwing open the floodgates of litigation." *Guardian Flight et al. v. HCSC* ("*Guardian Flight I*"), 140 F.4th 271,

277 (5th Cir. 2025). Nothing in the NSA purports to allow parties to collaterally attack eligibility determinations other than what is permitted under the FAA.

Anthem responds that, even if it were challenging payment determinations, its claims would not be subject to the NSA's judicial review bar because: (1) its alleged scheme concerns "thousands" of unidentified awards, not just one; and (2) it seeks relief beyond what it could have sought in IDR, specifically an injunction and damages for fees paid to the IDREs and legal expenses incurred in disputing eligibility. Anthem's first argument, that the bar applies to efforts to overturn *one* IDR award, but not *multiple* awards, makes no sense, and courts have agreed in comparable settings. *See Ibarzabal v. Morgan Stanley DW, Inc.*, No. 07 CIV. 2273 (SCR), 2007 WL 9753006, at *3-4 (S.D.N.Y. Dec. 5, 2007) (rejecting class action attacking defendant's alleged conduct in multiple prior arbitrations); *Quintana v. Morgan Stanley DW, Inc.*, No. 05-21401-CIV, 2005 WL 8155929, at *4 (S.D. Fla. Dec. 8, 2005) (rejecting claims based on defendant's failure to produce discovery materials in several prior arbitrations); *Nazar v. Wolpoff & Abramson, LLP*, 530 F. Supp. 2d 1161, 1166, 1169 (D. Kan. 2008) (rejecting claims alleging misconduct across two arbitration proceedings).

Anthem's second argument, that requesting certain relief, like IDR fees or a prospective injunction, allows it to circumvent the bar to judicial review, would effectively gut the IDR mechanism Congress has erected by statute. Courts have rejected such tactics, holding that claims for damages and equitable relief are impermissible collateral attacks particularly where, as here, the alleged harm and requested relief arise from the same facts as the vacatur claims. In *Center for Excellence in Higher Education, Inc. v. Accreditation Alliance of Career Schools & Colleges*, 166 F.4th 452, 461-62 (4th Cir. 2026), the Fourth Circuit squarely rejected Anthem's proffered interpretation. There, an accreditation group's decision to withdraw plaintiff school's accreditation

was confirmed in binding arbitration. Plaintiff then sought in federal court a declaration that the withdrawal of accreditation was arbitrary and capricious, injunctive relief to reverse the withdrawal decision, prospective injunctive relief requiring the accreditation group to adhere to due process, and damages and attorney fees for the alleged due process violations. As an initial matter, the court agreed with its "peer circuits" and adopted the "impermissible-collateral-attack rule" as "necessary to fully effectuate the exclusivity of the Federal Arbitration Act." Then it looked to the "requested relief and its relationship to the alleged wrongdoing and purported harm" to determine whether the rule applied. The court held that it did, because the purported harms and each of the proposed remedies all flowed from the exact conduct before the arbitrator. *Id.*; *see also Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 747-50 (5th Cir. 2008) (analyzing whether plaintiff's RICO claim, and other fraud-based claims, seeking as damages the costs and expenses of the arbitration, lost profits, reputational injury, and lost business opportunities, constituted impermissible collateral attacks on a foreign arbitral award, based on whether the claims advanced and relief requested were "analytically distinct" from plaintiff's (failed) vacatur claim, and finding they were not). The same is true here with respect to Anthem's claim for fees and expenses incurred in arbitrating allegedly ineligible disputes and its request to effectively enjoin the Provider Entities from challenging claims of ineligibility in the future at the risk of contempt. These requested remedies all flow from the same conduct already litigated before the IDREs, as evidenced by Anthem's claim for vacatur *in the alternativ*e to all of its other claims.

Finally, Anthem argues that the judicial bar does not apply because even though Section 10(a)(1)-(4) of the FAA constitutes the exclusive *grounds* to vacate IDRE payment determinations, the *procedures* from the FAA are not incorporated into the NSA. Opp. Br. at 18. Leaving aside that no court has ever interpreted the NSA to allow *challenges* to IDR awards except via a vacatur

claim under the FAA, this argument is a red herring. Dismissal does not depend on whether the NSA incorporated procedural provisions of the FAA. Rather, the law prohibits Anthem from resorting to judicial review outside of FAA-based grounds, and Anthem cannot satisfy either of the *grounds* for vacatur (as explained in Section II of the Provider Entities' Opening Brief and Section II, below). The Court should reject Anthem's invitation to rewrite the law here.

II. Anthem Has Not Satisfied Either of Its Claimed Grounds for Vacatur.

Judicial review of an arbitration award "is severely circumscribed." *Apex Plumbing Supply, Inc. v. U.S. Supply Co.*, 142 F.3d 188, 193 (4th Cir. 1998). A court's job is to decide only "whether the arbitrator did his job—not whether he did it well, correctly, or reasonably, but simply whether he did it." *U.S. Postal Serv. v. Am. Postal Workers Union*, 204 F.3d 523, 527 (4th Cir. 2000) (quoting *Mountaineer Gas Co. v. Oil, Chem. & Atomic Workers Int'l Union*, 76 F.3d 606, 608 (4th Cir. 1996)). Viewed through this lens, nothing in Anthem's Opposition salvages its attacks on the arbitration awards.

First, Anthem's Opposition does not even attempt to refute the Provider Entities' primary argument that Anthem cannot demonstrate fraud under the FAA, and its own pleadings are its downfall. Anthem admits not only that the alleged misrepresentations were readily discoverable, but that Anthem *actually* discovered and raised eligibility objections with the Provider Entities and the IDREs.[4] *See* Compl. ¶¶ 64, 66, 67, 117, 119, 130, 166, 173, 174, 176, 185, 192, 198, 204, 210, 216, 221. Anthem's Opposition also concedes that it "did often object to eligibility" and "this fraud is not newly discovered." Opp. Br. at 21. Even the cases Anthem cites are damaging to its position. *See Portis v. Ruan Transp. Mgmt. Sys., Inc.,* No. 7:15CV00118, 2016 WL 7388403, at *2-3 (W.D. Va. Dec. 19, 2016) (declining to vacate an arbitration award for fraud because the plaintiff raised

[4] The Complaint also references "undue means" as a basis for vacatur (*see, e.g.,* Compl. ¶ 372), but that phrase appears nowhere in the Opposition, suggesting Plaintiffs have abandoned that theory.

the supposed lie with the arbitrator, thus "it cannot be said that [plaintiff] did not have the opportunity to present evidence or argument to the arbitrator regarding [defendants'] allegedly fraudulent conduct"); *Pour Le Bebe, Inc. v. Guess? Inc.*, 112 Cal. App. 4th 810, 827, 837 (2003) (concluding that plaintiff did not receive a full hearing but nonetheless declining to vacate an arbitration award, stating that "[i]f the Legislature intended to permit an arbitration award to be vacated whenever the prevailing party engages in tactics that might in any way seem unfair, it would not have used the specific examples of fraud and corruption"); *Weirton Med. Ctr., Inc. v. QHR Intensive Res., LLC*, 682 F. App'x 227, 228 (4th Cir. 2017) (declining to vacate an arbitration award because the plaintiff "had the opportunity" to raise the false and misleading statements at an arbitration hearing, but failed to); *Belmont Partners, LLC v. Mina Mar Grp., Inc.*, 741 F. Supp. 2d 743, 753-54 (W.D. Va. 2010) (declining to vacate an arbitration award for fraud because plaintiff failed to show "by clear and convincing evidence that the [false statement] was not discoverable prior to or during the arbitration proceedings" when "the [false statement] was a disputed fact in the arbitration proceedings and was briefed on both sides").

In a last-ditch effort, Anthem invokes an Eleventh Circuit case, *Bonar v. Dean Witter Reynolds, Inc*., 835 F.2d 1378, 1383-84 (1988), while ignoring a more recent Eleventh Circuit decision, from 2025, *Reach Air Medical Services LLC v. Kaiser Foundation Health Plan Inc.,* 160 F.4th 1110 (11th Cir. 2025). In *Reach Air,* the plaintiff sought to vacate an IDR award on the grounds that (a) it was procured by fraud and (b) the IDRE exceeded its authority – just as Anthem is attempting here on a larger scale. Specifically, the plaintiff in *Reach Air* alleged that the defendant had misrepresented the QPA in negotiations. *Id.* at 1117. The district court granted defendant's motion to dismiss for failure to state a vacatur claim, and the Eleventh Circuit affirmed on the grounds that the complaint failed to allege, among other things, the manner in which the

fraudulent statement misled the plaintiff and how the alleged misrepresentation was connected to the IDRE's determination. *Id.* at 1122. So too here, Anthem's allegations attempting to connect an attestation of belief about eligibility to the ultimate payment determination are not plausible. Nothing in the statute or regulations direct IDREs to rely or contemplates IDREs relying exclusively on the initiating party's attestation when making the threshold determination of eligibility ahead of a payment decision. Further, Anthem cannot allege it was misled by defendants because Anthem disputed eligibility with the Provider Entities and the IDREs at various junctures in the IDR process. Anthem has pled itself out of this Court.

Second, with respect to its vacatur claim under Section 10(a)(4), Anthem tries to confuse the issue by framing its argument as IDREs exceeding their authority by "issuing determinations on ineligible disputes." Opp. Br. at 20; *see Plastic and Reconstructive Surgery Grp. v. Aetna, Inc.,* No. 3:25-CV-00211 (SVN), 2026 WL 815652, at *6 (D. Conn. March 23, 2026) (rejecting the same argument). Put differently, Anthem suggests the IDREs got the eligibility determinations *wrong*, and everything that came after, including deciding between two payment offers, exceeded the scope of their authority. But the test is not whether the IDREs decided the eligibility determinations rightly or wrongly— something Anthem does not dispute. *See id.* at *6 (concluding that the IDRE did not exceed its authority under the FAA by issuing zero-dollar awards). The test is whether the IDREs had the *authority* to decide contested issues of eligibility at all, which they clearly did under the governing regulations. *See AO Techsnabexport v. Globe Nuclear Servs. & Supply GNSS, Ltd.*, 404 Fed. Appx. 793, 797 (4th Cir. 2010); 45 C.F.R. § 149.510(c)(1)(v) ("[T]he certified IDR entity selected must . . . determine whether the Federal IDR process applies.").[5] Anthem therefore cannot meet the "exceeds authority" test.

[5] Anthem cites *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 413 (2025), in a footnote, but the regulations on which Defendants rely do not implicate *Loper Bright* because the NSA specifically

For these reasons, the NSA's bar on judicial review requires dismissal for lack of subject matter jurisdiction.

III. The Doctrine of Issue Preclusion Prevents Anthem from Relitigating Eligibility and Payment Determinations.

Even if this Court had subject matter jurisdiction over Anthem's claims, the claims are foreclosed under the collateral estoppel doctrine, which prevents parties from relitigating a particular issue of fact that has already been decided. Anthem's response is that it was denied a "full and fair opportunity to contest Defendants' NSA scheme" in IDR and that the IDREs never ruled on the question of "fraud." Opp. Br. at 31-32. But this argument incorrectly frames the "issue" for collateral estoppel purposes as if Defendants were making some sort of double jeopardy argument. In so doing, Anthem ignores the underlying legal and factual *issues* that the IDREs decided, supposed false attestations of eligibility, inflated payment offers, and eligibility determinations in thousands of IDR disputes. These issues were (a) "previously litigated;" (2) "actually resolved;" (3) "critical and necessary" to the IDREs determinations; and (4) "final and valid." And, Anthem had a "full and fair opportunity to litigate" them in the IDR process. *See In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004).

Anthem's argument to the contrary is premised on the overarching fictional theme of its Opposition and Complaint that it lacked meaningful opportunities to contest eligibility in the IDR process. Anthem misrepresents to the Court that "Congress did not delegate eligibility decision making to the IDREs" (Opp. Br. at 29),[6] that there is no "evidence of any decision regarding . . . the eligibility of any individual IDR dispute" (*id.* at 30), and that IDREs are directed to rely

authorized the Secretary of Health and Human Services, jointly with the Secretaries of Labor and Treasury, to establish by regulation the IDR process. *See* 42 U.S.C. § 300gg-111(c)(2)(A).

[6] In yet another example of Anthem talking out of both sides of its mouth, elsewhere in the Opposition Anthem admits that "regulations direct IDREs to review eligibility." (Opp. Br. at 2).

exclusively on the initiating party's attestation when determining eligibility (*id.* at 6). This construct is entirely false and cannot be credited in light of the implementing regulations that clearly state that in every IDR proceeding the IDRE must first "determine whether the IDR process applies." 45 C.F.R. § 149.510(c)(1)(v); *see Plastic and Reconstructive Surgery Grp.*, 2026 WL 815652, at *2 ("After confirming that it and its assigned personnel have no conflicts of interest, the IDR entity performs two tasks. First, it 'determine[s] whether the Federal IDR process applies.'"). In other words, by regulation, the IDRE *must* determine eligibility as a condition precedent to a payment determination. And, while the regulations indeed direct the IDR to "review the information submitted in the notice of IDR initiation to determine whether the Federal IDR process applies," the notice is comprised of much more than just the attestation, again contrary to what Anthem represents to this Court. *See* Opp. Br. at 6 (the "notice of IDR initiation—which only contains the provider's attestation of eligibility"). The attestation is one among nine items included in the notice relevant to the IDRE's decision making. 45 C.F.R. § 149.510(b)(2)(iii)(A).

Further, there is no directive in the statute, regulations, or guidance that IDREs should rely *exclusively* on the notice, let alone *exclusively* on the attestation within the notice. To the contrary, the regulatory requirement that the "non-initiating party must also provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal by the same date that the notice of certified IDR entity selection must be submitted" if it "believes that the Federal IDR process is not applicable" contemplates that IDREs consider information submitted by *both* parties when making the threshold eligibility determinations. 45 C.F.R. § 149.510(c)(1)(iii). IDREs are also directed by regulation "to consider additional information submitted by a party that relates to the offer for the payment amount for the qualified IDR item or service." 45 C.F.R. § 149.510(c)(4)(iii)(D). Accepting as true the specific examples from Anthem's complaint,

Anthem appears to have often contested eligibility at the same time it made its offer of payment, and by the text of the regulations, the IDREs were required to consider Anthem's objections. Compl. ¶¶ 166, 176, 185, 192, 198, 204, 210, 216, 221.[7]

To maintain its fictional narrative of a system devoid of due process, Anthem also hypocritically asks this Court to disregard CMS guidance that runs counter to its position. Opp. Br. at 29. Anthem itself relies on guidance on the collection of fees by IDREs (Opp. Br. at 6), "several resources [CMS has issued] to aid interested parties in determining whether a state surprise billing law exists" (Compl. ¶ 46), and guidance concerning "best practices" by arbitrators under Virginia's Balance Billing Law (Compl. ¶ 100), which is an entirely different statutory regime, wholly irrelevant to how federal IDREs are instructed to function. But when *Defendants* refer to regulatory guidance, Anthem contends it is "nonbinding" and "override[s] the plain language of the NSA, controlling regulations, and Anthem's Complaint." Opp. Br. at 30. While the CMS guidance certainly overrides Anthem's implausible narrative, it does not conflict with any language from the NSA or controlling regulations. Rather, the guidance is entirely consistent with a non-initiating party's obligation to "provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal by" a certain date (45 C.F.R.

[7] These facts plus the requirement that IDREs must find eligibility ahead of every award distinguishes the present facts from the cases Anthem cites. For example, in *Hare v. Simpson,* the court declined to apply the doctrine of collateral estoppel to the issue of the legitimacy of a power of attorney because appellees' counsel admitted at oral argument that the issue "was not litigated" in the earlier proceeding and, unlike here, "[t]here [was] simply no indication about whether the court entertained" the issue at hand. 621 F. App'x 748, 753-54 (4th Cir. 2015); *see Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 326 (1979) (assessing an entirely different question of whether a litigant who was not a party to a prior judgment may use that judgment "offensively" to prevent a defendant from relitigating the same issues resolved against it in a prior proceeding); *Staub v. Nietzel*, No. 22-5384, 2023 WL 3059081, at *4 (6th Cir. Apr. 24, 2023) (assessing issue preclusion under Kentucky state law and finding no preclusive effect because the party against whom preclusion was sought was not the same party from the initial action); *Grimes v. BNSF Ry. Co.*, 746 F.3d 184, 188-189 (5th Cir. 2014) (declining to apply collateral estoppel on the grounds that the arbitrators, in affirming a termination decision by the railroad, only reviewed the record of the internal investigation and hearing conducted by the railroad).

§ 149.510(c)(1)(iii)) and the IDRE's obligation to consider any additional information provided by the non-initiating party in making the payment determination. 45 C.F.R. § 149.510(c)(4)(iii)(D).

The plain language of this guidance is fatal to Anthem's narrative. Section 4.4 of the guidance to IDREs states as follows: "The certified IDR entity **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." CMS, Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities, 4.4, Instances When the Non-Initiating Party Believes That the Federal IDR Process Does Not Apply (Dec. 2023) (emphases added). Anthem does not allege in its Complaint or argue in the Opposition that the CMS guidance was issued by pertinent agencies in excess of authority granted by the NSA, but now declares the guidance "nonbinding," without citing any authority. At least one court has already rejected a similar conclusory challenge to NSA guidance, as should this Court. *See Worldwide Aircraft Servs. Inc. v. Sec'y of Health & Hum. Servs.*, 763 F. Supp. 3d 1371, 1381 (M.D. Fla. 2025) ("Plaintiff's Complaint fails to supply any factual allegations for why Defendants' promulgation of regulations and guidance pursuant to the NSA's statutory mandate is not inherently 'reasonable and reasonably explained.'"); *see also Plastic and Reconstructive Surgery Grp.,* 2026 WL 815652, at *6 (quoting *Avraham Plastic Surgery LLC v. Aetna, Inc.*, No. 25-CV-784 (OEM) (SDE), 2025 WL 3779084, at *7 (E.D.N.Y. Dec. 30, 2025)) (looking to "the NSA, its legislative history, or the corresponding federal regulations and **guidance**" to reject an argument that "an award of zero dollars is an improper outcome of the NSA dispute resolution process" (emphasis added)).

Anthem next raises a laundry list of complaints with the IDR process, including no discovery, no evidentiary requirements, no testimony, no cross-examination, and no ability to rebut an opposing party's offer. Opp. Br. at 5, 35. But these criticisms of the system are more properly directed to Congress and are immaterial to the Court's analysis here. For example, it does not matter that the IDREs do not issue written eligibility findings, as this is not a circumstance where it is impossible to discern what was previously decided. *Reach Air Med. Servs. LLC,* 160 F.4th at 1119-20 ("[A]n arbitrator's actual reasoning is of such little importance to our review, that it need not be explained, the decision itself is enough."); *Wachovia Secs., LLC v. Brand,* 671 F.3d 472, 481 (4th Cir. 2012) ("[A]rbitrators are not required to explain their reasoning."); *MCI Constructors, LLC v. City of Greensboro*, 610 F.3d 849, 862-63 (4th Cir. 2010) ("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." (collecting cases). IDREs are empowered to issue payment decisions only on "qualified" items; consequently, the issuance of an award is proof that the IDRE found eligibility. 42 U.S.C. § 300gg-111(c)(5)(A).

Anthem also bemoans the financial "incentive" of IDREs to find eligibility (where it may otherwise be lacking). Opp. Br. at 38-39. By Anthem's logic, every paid arbitrator is biased simply because it is compensated for its time and stands to earn *more* money if it permits the arbitration to proceed rather than dismiss the case at an earlier juncture. But Congress built into the NSA various safeguards to protect the integrity of the process. For example, an IDR entity must be certified by the Secretary of HHS, jointly with the Secretaries of Labor and the Treasury, as having, among other things, sufficient expertise in arbitration and claims administration of health care services, managed care, billing and coding, and medical and legal matter, and a process to ensure that no conflict of interest exists between the parties and the IDRE. 45 C.F.R. § 149.510(e)(1)-(3).

Additionally, parties may petition HHS for a denial or revocation of an IDRE's certification on the grounds that the IDRE failed to meet certain standards in conducting payment determinations, including standards of independence and impartiality. *Id.* § 149.510(e)(5)-(6). If Anthem believed particular IDREs were biased, it could have sought to have them decertified or made a claim for vacatur under 9 U.S.C. § 10(a)(2) ("evident partiality or corruption in the arbitrators"), but it did neither, opting instead to try to brand the Provider Entities with a racketeering moniker.

Anthem admits that the "regulations direct IDREs to review eligibility" (Opp. Br. at 2), that it has multiple opportunities to contest eligibility, that it has the informational advantage to do so, and that it often avails itself of those opportunities. Compl. ¶¶ 64, 66, 67, 117, 119, 130, 166, 173, 174, 176, 185, 192, 198, 204, 210, 216, 221. As such, it is unclear what opportunities were lacking. If Anthem, one of the largest insurance companies in the world, lodged its eligibility objections with the IDREs too late in the process because it felt "overwhelmed," if it neglected to object at all, or if it was overruled by the IDREs, it does not mean the issue of eligibility was not actually litigated and decided. After all, Anthem does not allege that IDREs *always* made the wrong decisions on eligibility—only an estimated 60% of the time (Compl. ¶ 38)—the 60% where Anthem is dissatisfied with the result and wants another bite at the apple.

The Provider Entities have demonstrated with "certainty that [the IDR process] decided the identical issue raised" in the subsequent action—here, eligibility and the ensuing payment amount. *O'Reilly v. Cnty. Bd. of Appeals for Montgomery Cnty., Md.*, 900 F.2d 789, 792 (4th Cir. 1990); *In re Hadley*, No. 09-73717-FJS, 2011 WL 3664746, at *15 n.6 (Bankr. E.D. Va. Aug. 19, 2011) (finding party asserting collateral estoppel must provide evidence confirming "what precise issues were actually litigated" in the prior action). Collateral estoppel therefore bars all of Anthem's claims.

IV. The *Noerr-Pennington* Doctrine and Virginia's Anti-SLAPP Statute Immunize Statements Made in IDR Proceedings.

Anthem acknowledges, as it must, that *Noerr-Pennigton* immunity applies to influencing decision making by the government and has been expanded to protect actions taken in adjudicatory proceedings before administrative agencies. Opp. Br. at 24-25. It logically follows that statements made in an IDR submission to influence decision making by a statutorily created arm of the federal government in response to an insurer's failure to pay reasonable rates for emergency medical services are precisely the type of First Amendment speech protected under *Noerr-Pennington*.

Nevertheless, Anthem offers a number of unpersuasive reasons why the *Noerr-Pennington* doctrine should not apply to IDR. First, it recasts IDR as merely a "private commercial dispute" "before a private organization" (IDREs) that "does not implicate the First Amendment." Opp. Br. at 24-25. The legislative history of the NSA and Anthem's own pleadings demonstrate otherwise. Anthem cannot escape that IDREs are imbued with authority by federal statute and regulation, have a government mandate to adjudicate payment disputes between insurers and providers, and are certified and overseen by HHS. Compl. ¶¶ 2, 46; 45 C.F.R. § 149.510(e). Anthem's own pleadings likewise refer to the Provider Entities' IDR submissions as statements to the federal government. Compl. ¶¶ 62, 120; Opp. Br. at 4, 9-10, 25.

Next, Anthem argues that the challenged statements do not relate to matters of public concern under either *Noerr-Pennington* or Virginia's anti-SLAPP law. (Opp. Br. at 3, 26, 67). But it is difficult to see how statements made to secure fair payment for medical services provided *to the public* via the Congressionally prescribed mechanism for addressing surprise billing of patients is anything but the epitome of public concern. Elsewhere in its brief, when it is advantageous to do so, Anthem concedes as much, classifying Defendants' conduct as "a special threat to social well-being, particularly given the impact on overall healthcare costs and consumers" and stating

"[t]hat the NSA scheme is conducted in the context of a statutorily-created dispute resolution program designed to lower medical costs only confirms the threat to 'social well-being.'" Opp. Br. at 56. Anthem cannot have it both ways.

Third, Anthem asserts that no precedent applies *Noerr-Pennington* immunity to IDREs. *See* Opp. Br. at 25. But it does not dispute that *Noerr-Pennington* has been applied to arbitrations. IDR is simply a statutorily created form of arbitration integral to the process Congress designed, and that three federal agencies oversee, to prevent the surprise billing of patients. *See Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft,* 189 F. Supp. 2d 385, 392 (E.D. Va. 2002) (finding *Noerr-Pennington* immunity applied to the WIPO arbitration process because it was "an integral part of the United Nations system of organizations, with a mandate to administer intellectual property matters"). Indeed, Congress expressly incorporated the FAA into IDR process, and the implementing regulations, courts, and Anthem's own complaint all refer to IDR as arbitration. *See* 42 U.S.C. § 300gg-111(C)(5)(E)(i)(II); 45 CFR § 149.510(e)(2); Compl. ¶ 31; *Avraham Plastic Surgery LLC v. Aetna, Inc.,* No. 25-CV-784 (OEM) (SDE), 2025 WL 3779084, at *4 (E.D.N.Y. Dec. 30, 2025) ("The NSA may designate IDR decisionmakers as 'CIDREs' rather than 'arbitrators' and uses the term 'IDR' rather than 'arbitration,' but the role of a CIDRE as a neutral decisionmaker making a binding judgment to resolve a dispute between two parties makes them virtually indistinguishable from arbitrators and *functionally akin to judges*." (emphasis added)).

As a backstop, Anthem invokes a "fraud exception" to *Noerr-Pennington*, while at the same time conceding that the Fourth Circuit has not recognized any such exception. Opp. Br. at 27. Anthem asserts that the Provider Entities' attestations are not immunized because they are "intentional misrepresentations of fact" that deprived the IDR proceeding of its legitimacy. Opp. Br. at 27. Assuming, *arguendo*, that the attestations were inaccurate, they are hardly

representations of pure "fact," but rather statements of belief: "I . . . attest that to the best of my knowledge . . . the items and/or services at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process." *See* Compl. ¶ 59.

Further, the out-of-circuit cases recognizing a limited fraud exception to *Noerr-Pennington* require that any misrepresentation must have been (1) "intentionally made, with knowledge of its falsity;" and (2) "material, in the sense that it actually altered the outcome of the proceeding." *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 843 (7th Cir. 2011); *Kottle v. Nw. Kidney Ctrs.*, 146 F.3d 1056, 1062-63 (9th Cir. 1998) (holding that the alleged misrepresentations were not material in the sense that they "deprived the entire . . . proceeding of its legitimacy"); *Cheminor Drugs, Ltd. V. Ethyl Corp.*, 168 F.3d 119, 124 (3d Cir. 1999) ("A *material* misrepresentation that affects the very core of a litigant's . . . case will preclude *Noerr-Pennington* immunity."). Materiality cannot be satisfied here. As described above, the IDR process contemplates that IDREs will evaluate eligibility independent of the initiating party's attestation, including based on any information submitted by the non-initiating party. Further, the alleged misrepresentations could not have "deprived the entire . . . proceeding of its legitimacy" because, by its own admission, Anthem alerted the IDREs that it disagreed with the Provider Entities' eligibility attestations and the IDREs nevertheless ruled as they did. *See* Compl. ¶¶ 166, 173, 174, 176, 185, 192, 198, 204, 210, 216, 221. The Court should decline to apply, for the first time, a fraud exception to the *Noerr-Pennington* doctrine under this set of facts.[8] For similar reasons, this Court should decline to apply

[8] Anthem cursorily states that Defendants' invocation of *Noerr-Pennington* is premature. But courts in the Fourth Circuit routinely dismiss claims under the *Noerr-Pennington* doctrine at the motion to dismiss stage, and Anthem offers no reason why this Court should not resolve its applicability now. *See, e.g., RE/MAX LLC v. M.L. Jones & Assoc., Ltd.,* No. 5:12-CV-768-D, 2013 WL 4647517, at *4 (E.D.N.C. Aug. 29, 2013) (dismissing counterclaims under *Noerr-Pennington* doctrine); *Biltmore Co. v. NU U, Inc.,* 1:15-CV-288-MR, 2016 WL 7494474, at *3-5 (W.D.N.C. Dec. 30, 2016) (same); *Syngenta Crop Protection, LLC v. Atticus, LLC,* 2022 WL 842938, at *4-5 (E.D.N.C. Mar. 21, 2022) (granting motion to dismiss on *Noerr-Pennington* grounds).

any exception to Virginia's anti-SLAPP statute where any alleged statements by Defendants are statements of opinion subject to a formal challenge process. *Petrak v. Sawyers*, No. 0110-24-4, 2025 WL 2956919, at *7 (Va. Ct. App. Oct. 21, 2025) (refusing to apply exception to anti-SLAPP).

And, of course, Anthem's claims attempt to impute knowledge of the falsity of the attestations based on allegations that the Provider Entities initiated more IDR and asked for higher payment amounts than Anthem thinks is reasonable. Compl. ¶ 113. This type of conduct is squarely protected under *Noerr-Pennington* and Virginia's anti-SLAPP statute. Medical providers, like Defendants, should be permitted to use the Congressionally mandated process to redress withholding of fair payment for medical services "without fear of liability" as the *Noerr-Pennington* doctrine and Virginia's anti-SLAPP statute intended. *See Baltimore Scrap Corp. v. David J. Joseph Corp.*, 237 F.3d 394, 398 (4th Cir. 2001) (*Noerr-Pennington* immunity "guarantees citizens their First Amendment right to petition the government for redress without fear of [] liability").

V. Anthem's Opposition Does Not Overcome the RICO Pleading Deficiencies.

A. The Litigation Activities Exemption Precludes Anthem's RICO Claims.

Anthem asks this Court to disregard established precedent holding that litigation activities, including arbitration filings, cannot constitute wire fraud and cannot support a RICO claim entirely premised on the pursuit of IDR.

First, Anthem says "the policy reasons behind the doctrine do not remotely apply to IDR." Opp. Br. at 37. But Anthem avoids describing what exactly those "policy reasons" are. Instead, Anthem mis-cites *United States v. Pendergraft*, 297 F.3d 1198, 1206-07 (11th Cir. 2002), to say the "policy rationale for the litigation activities exemption is rooted in the court's extensive procedures and mechanisms for policing fraudulent filings." Opp. Br. at 38. The *actual* "policy

rationale" discussed in *Pendegraft*, however, is far broader than Anthem's snippet. As the *Pendegraft* court aptly explained:

> History has taught us that, if people take the law into their own hands, an endless cycle of violence can erupt, and we therefore encourage people to take their problems to court. We trust the courts, and their time-tested procedures, to produce reliable results, separating validity from invalidity, honesty from dishonesty. While our process is sometimes expensive, and occasionally inaccurate, we have confidence in it. When a citizen avails himself of this process, his doing so is not inherently "wrongful."

297 F.3d at 1206-07. Applying this policy, the *Pendergraft* court rejected the government's effort to cast as mail fraud the act of "serving litigation documents by mail" even if those documents included "false affidavits." *Id.* at 1208 ("A number of courts have considered whether serving litigation documents by mail can constitute mail fraud, and all have rejected that possibility." (collecting cases)). These policy reasons are no less applicable in the IDR setting, particularly when that setting is the exclusive litigation mechanism that Congress created for providers to challenge underpayments for medical services performed. This case, at its core, is Anthem's attempt to chill healthcare providers from exercising statutory rights to adjudicate claims by seeking fair compensation, lest they be branded with the stigma of RICO. So, Anthem tiptoes around this policy against chilling effects because it hits too close to home.

Second, in yet another internal contradiction to its *Noerr-Pennington* argument, Anthem says the exemption does not apply because Defendants' "litigation activities" are "independently intended to deceive" a third party, HHS, as well as other insurers. Opp. Br. at 37-38, 40. Anthem relies on two easily distinguishable cases for its third-party deception argument: *United States v. Lee*, 427 F.3d 881, 890 (11th Cir. 2005), and *Carroll v. U.S. Equities Corp.*, No. 18-cv-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020). *Lee* involved documents never filed in court, and *Carroll* involved predicate RICO acts beyond litigation activities, while noting that allegations of

frivolous litigation cannot suffice. *Lee,* 427 F. 3d at 890; *Carroll*, 2020 WL 11563716, at *8 ("[A]llegations of frivolous, fraudulent, or baseless litigation activities—without more—cannot constitute a RICO predicate act." (internal quotation marks omitted)).

Anthem further tries to dodge the litigation-activities exemption by claiming courts "have limited application of the exception to cases in which a '[p]laintiff alleges wire fraud based on materials from' a single lawsuit." Opp. Br. at 41. It cites nothing in support, however, except *Kim v. Kimm*, 884 F.3d 98 (2d Cir. 2018), which it says "left open" such an interpretation. But *Dees v. Zurlo*, No. 24-1574-CV, 2024 WL 2291701, at *2, *5 (N.D.N.Y. May 21, 2024), explicitly rejected any distinction between a single lawsuit and multiple lawsuits for purposes of the exemption, and the Second Circuit affirmed. *Dees v. Knox,* No. 24-1574-CV, 2025 WL 485019*,* at *2 (2d Cir. Feb. 13, 2025), *cert. denied*, 146 S. Ct. 201 (2025). So too should the Court here, especially in the absence of allegations of sham litigation.[9]

B. The Cases Anthem Cites in Support of a RICO Pattern are Inapposite.

In attempting to rebut Provider Entities' arguments about the lack of a RICO pattern, Anthem selectively cites language from a number of decisions that ultimately support the Provider Entities' argument. For example, in *Al-Abood ex rel. Al-Abood v. El-Shamari*, 217 F.3d 225 (4th Cir. 2000), the court found that the "narrow focus of the scheme . . . combined with the commonplace predicate acts persuades us that the facts here do not satisfy the pattern requirement" and thus are "not sufficiently outside the heartland of fraud cases to warrant RICO treatment." *Id*. at 238. Likewise, in *Ownby v. Cohen*, the court held that alleging "ten predicate acts fails to add up to a pattern of racketeering activity that meets the continuity requirement established by case law" and cautioned that

[9] Notably, Anthem does not invoke the *sham* litigation exception, which would be difficult here given the overall win rate by providers generally, and by the Provider Entities, in IDR.

> the Fourth Circuit's concern about applying RICO too broadly . . . remains valid: 'this circuit will not lightly permit ordinary business contract or fraud disputes to be transformed into federal RICO claims . . . [as] penalties of RICO are reserved for schemes whose scope and persistence set them above the routine. . . . A great many ordinary business disputes arising out of dishonest business practices or doubtful accounting methods, such as have until the present been redressed by state remedies, could be described as multiple individual instances of fraud, if one chose to do so. But to adopt such a characterization would transform every such dispute into a cause of action under RICO.

19 F. Supp. 2d 558, 565 (W.D. Va. 1998) (quoting *Flip Mortgage Corp. v. McElhone,* 841 F.2d 531, 538 (4th Cir.1988) (internal quotes and citations omitted)), *aff'd*, 194 F.3d 1305 (4th Cir. 1999). Anthem has failed to plead a pattern sufficient to maintain a RICO claim.

C. IDRE Decision-Making and Anthem's Own Failures Defeat Its Proximate Cause Argument.

Anthem does not dispute that to state a RICO claim it is required to plead adequately a direct relation between its injury and the alleged fraud. Anthem again resorts to the tired and implausible refrain that IDREs rely solely on the initiating party's attestation to decide eligibility as the foundation for its allegations of proximate cause. Once Anthem's allegations concerning its procedure for contesting eligibility are taken as true, as discussed above, its argument collapses. IDREs, by law, decide eligibility based on more than just the initiating party's attestation before considering and making a final decision on payment offers, thus severing any direct causal link between an allegedly false attestation and the awards Anthem now seeks to unwind.

Anthem points to *Bridge v. Phoenix Bond Indemnity Co*., 553 U.S. 639, 656-59 (2008), for the idea that a "representation made to and relied upon by IDREs does not constitute an 'independent factor' that breaks the chain," and that a plaintiff need show only that "someone relied on the defendant's misrepresentations" and, as a result, that the plaintiffs were harmed. Opp. Br. at 49. But *Bridge* recognizes only that there need not be *first* party reliance. There still, however, must be reliance by someone, which Anthem has failed to show short of ignoring its own

objections to eligibility and rewriting the regulatory language to instruct IDREs to consider *only* the initiating party's attestation.

Anthem's reliance on *Albert v. Glob. Tel*Link*, 68 F.4th 906, 910-11 (4th Cir. 2023), is similarly misplaced. In that case, the court held that plaintiffs' injuries were the "direct result" of the defendants' scheme because the governmental entities, the "intervening factor," had been tricked. In other words, the involvement of government entities could not break the link in the causal chain because they were in the dark about the alleged fraud. *Id.* at 913. For the reasons explained above, Anthem cannot plausibly allege the IDREs were unaware that Anthem disagreed with Provider Entities' eligibility attestations. That the IDREs ultimately decided against Anthem does not give rise to an inference that they, like the government entities in *Albert*, were duped.

And, of course, Anthem cites no authorities to excuse its own failure to timely dispute eligibility in those IDRs where it failed to do so, thus creating additional breaks in the causal chain. On that point, Anthem simply dismisses it as a factual dispute not ripe for the Court to consider at this stage, ignoring that the allegations in Anthem's own Complaint, accepted as true, demonstrate the untimeliness of Anthem's objections. Compl. ¶¶ 197-198, 220-221, 226-227, 288. Indeed, on the face of the pleading, for *every* example Anthem cites in its complaint, Anthem submitted its objections to eligibility well past the 3-day window established by the regulations.

Lastly, Anthem points to the administrative fees it paid as a causal injury. While it is true that the filing of IDR triggers a fee for the non-initiating party, to support a wire fraud theory, the harm to Anthem must be caused *by reason of* the misrepresentation, not by reason of the legal filing of multiple IDRs (or the submission of payment offers that Anthem believes were too high).

VI. Anthem has not Satisfied the 9(b) Pleading Requirements.

Anthem does not dispute that Rule 9(b) applies to fraud claims, but it fails to meet the high

pleading bar with respect to the "thousands" of allegedly ineligible disputes submitted by the Provider Entities. Under Rule 9(b), Anthem must plead with particularity the who, what, where, when, and why of the fraud. *Xcoal Energy & Res., L.P. v. Smith*, No. 2:07CV00057, 2008 WL 312912, at *1 (W.D. Va. Feb. 4, 2008). But Anthem's Opposition, like its Complaint, fails to explain "the particular circumstances for which [defendants] will have to prepare a defense at trial," the test Anthem proffers in its brief. *See* Opp. Br. at 42 (citing *McCauley v. Home Loan Inv. Bank, F.S.B.*, 710 F.3d 551 (4th Cir. 2013)). For example, the Provider Entities remain unclear about which disputes allegedly involved "services and disputes already governed by the Virginia Balance Billing Law" versus "disputes for services where no open negotiations" occurred versus "disputes already resolved or barred by timing rules." *See* Compl. ¶ 111; Opp. Br. at 10. The Opposition, like the Complaint, largely ignores the latter two categories, and does not even offer to amend with a single example.

Nor does the Opposition explain why the Court should overlook Anthem's failure to plead the universe of disputes that involved supposedly "inflated and commercially unreasonable requests for payment" (*see* Compl. ¶ 113) or what amount of the "objectional" disputes are attributable to each individual provider defendant. Instead, Anthem alleges only two to five instances of supposedly "ineligible state law claims" for each individual emergency medical provider. Where there are thousands of IDRs involving these same parties, this paltry number of examples could be entirely consistent with mistake. Even under the lower pleading bar of Rule 8 set by *Twombly* and *Iqbal*, plaintiffs have to plead facts that rule out a plausible legal explanation for the conduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility."); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 9(b) requires even

more particularity. Anthem has not satisfied it here.

VII. Anthem has Failed to Allege it is an ERISA Fiduciary.

To have standing to bring an ERISA claim, Anthem has the burden of showing it is a fiduciary with respect to the plans that have been allegedly harmed. The Opposition resorts to further obfuscation on this point, asserting vaguely that the employer sponsors of "certain" ERISA-governed health plans delegate to Anthem discretionary authority to "recover overpayments" and "administer the IDR process on behalf of the plans." Opp. Br. at 58-59. This is not enough. Anthem first neglects entirely the Provider Entities' argument that "claims administration" is a ministerial, non-fiduciary function. *See* Opening Br. at 35-36. Even the court in a case Anthem cites, *Nutrishare*, makes clear that "third-party administrators are not fiduciaries under ERISA when they merely perform ministerial duties or process claims." *Nutrishare, Inc. v. Conn. General Life Ins. Co.,* No. 2:13-CV-02378-JAM-AC, 2014 WL 1028351, at *3 (E.D. Cal. March 14, 2014).

Second, Anthem does not allege that the "certain" plans over which it had delegated authority were the *same* plans that were allegedly harmed by the fraud. It purports to have done so in paragraphs 33, 361, and 365 of the Complaint (*see* Opp. Br. at 60), but none of those paragraphs remotely concern ERISA. The cases Anthem quotes to excuse its pleading failures are also inapposite. In *Abira,* the sole Fourth Circuit case Anthem cites, the pleading requirements for derivative standing, not standing premised on being a fiduciary, were at issue. *Abira Med. Labs., LLC v. Anthem Health Plans of Virginia, Inc.*, No. 3:25CV108 (RCY), 2026 WL 281172, at *3-4 (E.D. Va. Feb. 3, 2026). The *Nutrishare* case Anthem cites considered only a request to certify for immediate interlocutory appeal a denied motion to dismiss. *Nutrishare, Inc. v. Connecticut Gen. Life Ins. Co.*, No. 2:13-CV-02378-JAM-AC, 2014 WL 2624981, at *1-3 (E.D. Cal. June 12,

2014).[10] And in *UnitedHealthCare*, plaintiff *did* allege that the fraud affected the ERISA plans that United administered. *UnitedHealthCare Servs. v. Team Health Holdings, Inc.*, No. 3:21-cv-00364, 2022 WL 1481171, at *8 (E.D. Tenn. May 10, 2022). In contrast, Anthem has not even alleged the threshold issue of whether it was the claims administrator, much less an ERISA fiduciary, for any of the allegedly harmed plans. Anthem is missing a necessary link in its causal allegations, and its ERISA claim should be dismissed accordingly.

VIII. Anthem's State Law Claims Independently Fail as a Matter of Law.

None of Anthem's state law claims should proceed for the reasons discussed above, and in the Provider Entities' opening brief. The state law claims also fail as a matter of law for the additional reasons set forth below:

Virginia Consumer Protection Act: Anthem's argument on the VCPA mischaracterizes the Provider Entities' argument from their motion to dismiss as well as the "consumer transaction" at issue. The Provider Entities' argument is not that Anthem is not a consumer (*see* Opp. Br. at 62),[11] but that the transaction at issue in this case, the filing of IDR, is not remotely a "consumer transaction" under the **exhaustive** list of consumer transactions defined by law. Va. Code § 59.1-198. Anthem does not suggest which of the six definitions of consumer transactions the filing of IDR would fall under. Instead, Anthem declares, without support and without reference to the statute's exhaustive list, that "emergency medical care provided to Anthem's members—are

[10] The *Nutrishare* decision on the motion to dismiss, which Anthem does not cite to, likewise considered a different issue than the Provider Entities have raised in their motion to dismiss. Specifically, it addressed whether the insurance company that administered the harmed plans was *authorized* by the specific language of those plans to bring the misrepresentation claims as a fiduciary. *Nutrishare, Inc. v. Conn. General Life Ins. Co.,* No. 2:13-CV-02378-JAM-AC, 2014 WL 1028351, at *3 (E.D. Cal. March 14, 2014).

[11] Anthem's definition of "consumer" is taken not from the VCPA itself, any Virginia court, or any other court interpreting Virginia law, but from a Northern District of California case applying Indiana law. Whether that Indiana law intended to treat payors as consumers is irrelevant to the scope of the VCPA and irrelevant to this case, particularly given the NSA's preclusion of surprise billing to patients.

quintessential consumer transactions squarely within the VCPA's protective ambit." Opp. Br. at 63. But this lawsuit is, by definition, not about billing patients for medical care provided to Anthem's members, it is about the Provider Entities' initiation of federal IDR to address Anthem's many failures to adequately pay for medical services rendered. The VCPA simply does not apply.

Common Law and Constructive Fraud: In an effort to salvage its common law fraud and constructive fraud claims, Anthem relies on the same case it cites in defense of its proximate cause allegations, *Bridge v. Phoenix Bond,* 553 U.S. 639, 656-57 (2008), for the proposition that courts will excuse first-party reliance where "a defendant intentionally induces reliance by an intermediary who has the legal authority to compel the plaintiff's financial loss." Opp. Br. at 65. As discussed above in Section V(C), the *Bridge* case and the other cases Anthem cites that track *Bridge* are inapposite. Anthem has not plausibly alleged reliance by an intermediary (here the IDRE), where the IDREs must consider not only the initiating parties' position on eligibility, but also Anthem's challenges to eligibility lodged with the IDREs.

Conversion: Anthem argues that a binding IDRE payment determination is not a court order, and thus it cannot constitute a "lawful justification" to defeat a conversion claim. But Virginia law does not support the limiting principle that a "lawful justification" can take only the form of a court order. To the contrary, the test for whether a "defendant has no legitimate claim to the property or recognized legal justification or excuse for taking possession and control of it" involves "an objective evaluation of the factual and legal legitimacy of the defendant's conduct." *See McCants v. CD & PB Enters., LLC*, 303 Va. 19, 27 (2024). A binding award handed down by an independent third-party arbiter pursuant to federal law easily confers such "recognized legal justification or excuse." Likewise, Anthem's argument that an IDR award procured by fraud cannot constitute a "lawful justification" fails for the same reasons as its common law and

constructive fraud claims. Ultimately, on this and other grounds, Anthem's claims are nothing more than a wild, implausible tale.

CONCLUSION

Based on the foregoing and Provider Entities' motion to dismiss and opening brief, Anthem's Complaint should be dismissed with prejudice.

Respectfully submitted this 10th day of April, 2026.

/s/ John S. Buford
John S. Buford (VSB No. 89041)
HANCOCK, DANIEL & JOHNSON, LLC
4701 Cox Rd., Suite 400
Glen Allen, VA 23060
Tel: 804-967-9604
Fax: 804-967-9888
jbuford@hancockdaniel.com

Barry S. Pollack (admitted *pro hac vice*)
Phillip Rakhunov (admitted *pro hac vice*)
Susan R. Cooke (admitted *pro hac vice*)
POLLACK SOLOMON DUFFY LLP
31 St. James Avenue, Suite 940
Boston, MA 02116
Telephone: (617) 439-9800
bpollack@psdfirm.com
prakhunov@psdfirm.com
scooke@psdfirm.com

Counsel for Defendants 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