

**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**

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**DEFENDANT AGS HEALTH, LLC'S MOTION TO DISMISS THE COMPLAINT**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant AGS Health, LLC ("AGS") hereby moves this Court to dismiss all claims against it in the Complaint filed by Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield and Healthkeepers, Inc. ("Anthem"), for the reasons stated in the Memorandum in Support filed contemporaneously herewith.

AGS respectfully requests that the Court grant this Motion to Dismiss the Complaint, award AGS its reasonable attorney fees, and grant any other and further relief that the Court deem just and proper.

Dated: January 27, 2026

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 27, 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/ William G. Laxton Jr.  
William G. Laxton Jr.

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**MEMORANDUM IN SUPPORT OF DEFENDANT AGS HEALTH, LLC'S  
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## INTRODUCTION

Plaintiffs Anthem Blue Cross and Blue Shield and Healthkeepers, Inc. (together, “Anthem”) participated in a congressionally mandated arbitration process—known as Independent Dispute Resolution (“IDR”)—designed to efficiently and exclusively resolve payment disputes between health care providers and insurers. Anthem lost the overwhelming majority of those arbitrations. Rather than accept the outcome of those binding arbitrations, as it must, Anthem filed a shotgun complaint designed to collaterally attack the losing arbitration determinations (but apparently not the few where it prevailed) and to chill medical providers from accessing these federal dispute procedures in the future. In other words, it seeks a redo on thousands of individual arbitrations that it already lost. Worse, the complaint improperly lumps together all “Defendants” with conclusory allegations that do not come close to the required specificity, lacks necessary elements of the claims, and contradicts black-letter law. It fails across the board as a matter of law, and is especially insufficient as to AGS Health (“AGS”).<sup>1</sup>

To start, this Court lacks subject-matter jurisdiction over most of Anthem’s claims. The No Surprises Act expressly limits judicial review to only the ability to *vacate* IDR awards as under the Federal Arbitration Act. As such, all of Anthem’s claims that seek *other* relief while collaterally attacking the awards themselves must be dismissed.

Next, issue preclusion independently bars Anthem from asserting claims that would have this Court re-litigate issues decided in the arbitrations. Anthem’s fraud theory relies on allegedly false eligibility attestations. Yet for every dispute now at issue, an Independent Dispute Resolution Entity (“IDRE”)—a neutral, third-party arbitrator—has already reviewed the evidence and decided eligibility. The federal common law of issue preclusion precludes Anthem from taking a second

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<sup>1</sup> In its complaint, Anthem misnames the company as “AGS Health Inc.” rather than the actual legal name—AGS Health, LLC.

bite at the apple in federal court for those same eligibility determinations.

Further, Anthem has not alleged any of its claims against AGS with the particularity required under Rule 9(b). Anthem specifically addresses AGS's alleged conduct in only *four* of its 385 paragraphs, Compl. ¶¶ 155–58, and instead uses vague language to improperly lump AGS in with all the defendants. Anthem's only concrete allegation is that AGS provides “robotic process automation tools” used to submit IDR disputes (Compl. ¶¶ 9, 112), which says nothing about the who, what, when, where, or how of any purported fraud by AGS. AGS was not a party to these arbitrations. Without particularized facts specifying AGS's conduct, the fraud-based claims cannot stand. Nor can Anthem allege causation—that is, that AGS proximately caused its alleged injuries—with the requisite particularity, especially where a neutral arbitrator ruled against Anthem in each arbitration it now challenges.

And even were it otherwise, the Noerr-Pennington doctrine independently would shield AGS from liability for accessing the federally created dispute procedures. The Noerr-Pennington doctrine prevents plaintiffs from imposing liability based on protected speech. Indeed, the Fourth Circuit just recently applied Noerr-Pennington to affirm dismissal of Racketeer Influenced and Corrupt Organizations (“RICO”) claims. *Navient Sols., LLC v. Lohman*, 136 F.4th 518, 522 (4th Cir. 2025). Here, statements and submissions to IDRE arbitrators qualify as protected speech, so Anthem's claims for monetary and prospective injunctive relief must be dismissed.

Finally, Anthem's complaint contains additional, claim-specific fatal flaws. The reasons are many, but the result flowing from each shortcoming is the same: This Court should dismiss Anthem's claims against AGS in their entirety.

## BACKGROUND

### **A. Congress Enacted the No Surprises Act to End Surprise Billing and Provide a Mechanism to Resolve Payment Disputes Between Medical Providers and Insurers.**

Effective January 1, 2022, Congress enacted the No Surprises Act. It protects patients from large bills for certain out-of-network medical services insurers do not pay in full by limiting the dispute to insurer and provider. 42 U.S.C. § 300gg-111. If the insurer and provider disagree on the proper amount to be paid for a patient’s care, the NSA requires them to negotiate, rather than bill the patient for any balance. If negotiations fail, either side may invoke binding arbitration through the IDR process before an IDRE to determine a reasonable payment amount. *Id.* § 300gg-111(c)(2). By statute, the pre-IDR negotiations last 30 days. *Id.* § 300gg-111(c)(1)(A). During those negotiations, the parties have their *first* chance to raise eligibility issues. If negotiations fail, either side can initiate IDR proceedings. *Id.* § 300gg-111(c)(1)(B). The initiating party attests that the dispute is eligible. 45 C.F.R. § 149.510(b)(2)(iii)(A)(6). The parties then jointly participate in the selection of an IDRE from a list of federally certified options. 42 U.S.C. § 300gg-111(c)(1)(B), (c)(4). After selection, each party pays a fee to compensate the IDRE. 26 C.F.R. § 54.9816-8T(d)(1).

At the start of each proceeding, the IDRE must independently determine that the dispute is eligible.<sup>2</sup> 45 C.F.R. § 149.510(c)(1)(v). IDREs receive their fee in part for “the costs incurred

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<sup>2</sup> “The Departments . . . emphasize that the certified IDR entities are responsible for ensuring that eligibility and payment determinations are accurate.” CMS, *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties 2* (June 2025), <https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf> [<https://perma.cc/ZY6V-S8EL>]. The Court may consider, “[i]n addition to the complaint, . . . matters of which a court may take judicial notice” when considering a motion to dismiss. *Just Puppies, Inc. v. Brown*, 123 F.4th 652, 660 (4th Cir. 2024). And, the Court “may take judicial notice of matters of public record.” *Epcon Homestead, LLC v. Town of Chapel Hill*, 62 F.4th 882, 885 (4th Cir. 2023).

in determining” eligibility. *Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges*, 88 Fed. Reg. 88494, 88505 (Dec. 21, 2023). At this point, the non-initiating party gets its *second* chance—indeed, obligation—to raise eligibility concerns. “[I]f the non-initiating party believes that the Federal IDR process is not applicable, the non-initiating party *must* . . . provide information regarding the Federal IDR process’s inapplicability *through the Federal IDR portal*[.]” 45 C.F.R. § 149.510(c)(1)(iii) (emphases added). This disclosure requirement exists because of the asymmetries of information between medical insurers and providers, as medical insurers possess the relevant plan information. Regulations balance these asymmetries by, for example, requiring insurers like Anthem to submit applicable insurance plan coverage information to the IDRE. 29 C.F.R. § 2590.716-8(c)(4)(i)(A)(3)(iii).<sup>3</sup> In other words, relying on required information from parties in the best position to share it, IDREs make independent eligibility determinations for each dispute. If the IDRE finds a dispute ineligible, it “must notify . . . the parties within 3 business days of making that determination.” 29 C.F.R. § 149.510(c)(1)(v).

To remain certified and continue hearing disputes, IDREs must properly perform their duties, including as to eligibility determinations. 42 U.S.C. § 300gg-111(c)(4)(A). Indeed, official government data shows that IDREs take this responsibility seriously, finding disputes ineligible 17.6 percent of the time.<sup>4</sup>

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<sup>3</sup> See also FHAS, *Important Updates to CMS IDR Portal Web Forms: What You Need to Know* (Sept. 12, 2025), <https://www.fhas.com/resources/industry-updates/important-updates-to-cms-idr-portal-web-forms-what-you-need-to-know/> [<https://perma.cc/D93L-AMYB>] (noting that the IDR portal requires insurers (as the parties with access to necessary plan information) to “attest to whether the health plan type selected by the initiating party is correct” and fix it if it is wrong).

<sup>4</sup> HHS et al., *Initial Report on the Independent Dispute Resolution (IDR) Process* 8 (Sept. 30, 2022), <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>

After the initial eligibility determination, the parties proceed to “baseball-style” arbitration before the IDRE. The parties each submit one payment offer to the IDRE, along with “any information” related to their offer amounts, including any legal objections to the underlying dispute. *Id.* § 300gg-111(c)(5)(B), (C); *see* 29 C.F.R. § 2590.716-8(c)(4)(i)(B). In other words, the submission of offers and relevant information give participants a *third* chance to challenge jurisdiction and any award and have the information considered by a neutral third party.<sup>5</sup>

To make a final payment determination, the IDRE considers the information submitted and selects the offer it determines most reasonable. 42 U.S.C. § 300gg-111(c)(5)(A). It must select either the amount proposed by the payor or the amount proposed by the provider, and it cannot split the difference. This system is designed to encourage parties to propose reasonable figures. By law, in choosing the most reasonable offer, IDREs cannot consider the provider’s usual and customary charges—or the reimbursement rate that would have been paid by Medicare or Medicaid—for the medical procedure. *Id.* § 300gg-111(c)(5)(D). Arbitration awards are “binding,” and payment “shall be made . . . not later than 30 days after the date on which such determination is made.” *Id.* § 300gg-111(c)(5)(E)(i)(I), (c)(6). The prevailing party has its IDRE fee refunded but not its administrative fee. 26 C.F.R. § 54.9816-8T(d)(1)–(2).

The Centers for Medicare & Medicaid Services (“CMS”), which oversees the program on behalf of HHS, offers an aggrieved party its *fourth* chance to dispute eligibility after an IDR determination has been made.<sup>6</sup> CMS has provided a mechanism for parties to re-open closed

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[<https://perma.cc/2VEM-DP6T>] (noting that, during the studied period, IDREs ruled that 15,895 of 90,078 disputes were ineligible, which is approximately 17.6%).

<sup>5</sup> At this stage, the parties also pay an administrative fee that compensates the Department of Health & Human Services (“HHS”) for administering the program. 26 C.F.R. § 54.9816-8T(d)(2)(i).

<sup>6</sup> *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties*, *supra* n.2 at 1.

arbitration proceedings for “errors identified after dispute closure,” including for “jurisdictional error[s]” such as where the IDRE “incorrectly determines” eligibility.<sup>7</sup> Parties can even “petition to revoke” an IDRE’s certification.<sup>8</sup> Indeed, reasons to de-certify include IDREs that have “a pattern or practice of noncompliance with any of the requirements applicable to certified IDR entities” and that have “committed or knowingly participated in fraudulent or abusive activities, including submission of false or fraudulent data[.]”<sup>9</sup>

Consistent with Congress’s intent to keep these disputes out of the courts, however, the Act strictly limits judicial review. “A determination of a certified IDR entity . . . *shall not be subject to judicial review, except in a case*” that would allow a court to vacate an award under section 10(a) of the Federal Arbitration Act. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (emphasis added); *see* 9 U.S.C. § 10(a)(1)–(4).

**B. Anthem’s Lengthy Complaint Barely Addresses AGS.**

Anthem’s 385-paragraph Complaint targets eight Defendants. Seven of those Defendants, 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 (collectively, the “Providers”) provided emergency medical services and other critical services for patients who were members of Anthem health plans. Anthem underpaid for those services. As a result, those medical providers sought additional payment from Anthem through the IDR process, as Congress

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<sup>7</sup> *Id.* at 3.

<sup>8</sup> CMS, *Submit a Petition to Revoke the Certification of a Current IDR Entity Providing Dispute Services* (last visited Jan. 27, 2026), <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations>.

<sup>9</sup> *Id.*

intended. The remaining Defendant, AGS, is a revenue management company that, as Anthem concedes, merely provides “tools” to help providers obtain appropriate payment for the critical emergency services they provide. Compl. ¶¶ 155, 156, 157, 158. Anthem avoids identifying specific conduct by AGS, instead using the phrase: Provider Defendants “*in coordination with*” AGS, 61 times. *See, e.g., Id.* ¶¶ 112, 115, 121 (emphasis added). Anthem does not allege, because it cannot, that AGS controlled any Provider decision-making or did anything other than offer a tool providers could use in the IDR process.

Anthem improperly lumps together the “Defendants” and targets them for arbitration awards issued against it. As Anthem acknowledges, since the IDR’s inception in 2022, medical providers have had success. *Id.* ¶ 133. In other words, after the independent third-party IDREs have (1) reviewed eligibility information from both sides and determined that the disputes are eligible for IDR, and (2) reviewed the offers and information submitted by both sides, they have then (3) selected payment offers from medical providers as more reasonable than insurers’ offers the vast majority of the time. *See id.*

Anthem is unhappy with that reality. Yet Anthem ignores its own responsibility for its losing track record. Indeed, it disregards its practice of systematically underpaying the initial bill (which triggers the need for IDR in the first place). It glides over its legal opportunity and obligation to challenge IDR eligibility through the IDR process (which allows the IDRE to make an informed and final decision on that question). And it fails to acknowledge its consistently unreasonable offers to the IDREs (which cause IDREs to reject Anthem’s offer in favor of more reasonable proposals from providers again and again).

Instead, Anthem takes aim at Defendants. Anthem alleges that Provider Defendants, “*in coordination with*” AGS, have concocted a scheme through which they (1) initiated ineligible IDR

proceedings, (2) flooded the system with claims, and then (3) submitted inflated payment offers. *Id.* ¶¶ 109–40. Of course, Anthem’s pleading strategy is confused: it attacks “Provider Defendants in coordination with AGS” while failing to articulate particularized allegations about what AGS itself supposedly did. But even aside from the fatal shortcoming as to AGS, Anthem also glosses over a necessary fourth step: in every case, a neutral, certified IDRE reviewed the eligibility information, concluded the dispute is eligible, reviewed both offers and supporting evidence, and *then selected the Providers’ offer*. This omission is fatal to Anthem’s claims. Still, each particular flaw in Anthem’s allegations—and omissions—deserves a closer look.

First, Anthem alleges that Defendants falsely attested that claims are eligible for the IDR process. *Id.* ¶¶ 48–63, 115–22. Anthem contends that IDR attestations misrepresented when and whether negotiations took place, the applicability of comparable state laws, and the coverage of Anthem’s insurance plans.<sup>10</sup> *Id.* That refrain lumps all Defendants together without providing any detail on AGS’s role. Anthem does not allege facts showing that AGS exercised control over any eligibility attestations, submission decisions, or offer amounts, or that AGS did anything beyond furnishing a revenue-cycle tool.

Anthem goes on to *admit* it was aware in real time of the alleged issues regarding eligibility. *Id.* ¶¶ 64–68, 116–17, 119, 130, 159–277. Even now, Anthem knows the number of supposedly ineligible IDR awards it has lost and the reasons for purported ineligibility. *Id.* ¶¶ 138–39. Anthem does not allege, however, that any neutral IDRE ever failed to perform an eligibility determination. *See* 45 C.F.R. § 149.510(c)(1)(v). Anthem does, however, concede that IDREs

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<sup>10</sup> Anthem also briefly suggests Defendants submitted untimely claims. *See* Compl. ¶¶ 57, 256–57, 385(d). But merely submitting an untimely claim would not constitute a fraudulent misrepresentation. In any event, this allegation suffers the same defects as Anthem’s other alleged misrepresentations.

found the Providers' payment offer more reasonable in "nearly 60 percent of disputes." Compl. ¶ 130.

So what then did Anthem do with all this knowledge? Anthem tells us it sent remittance advices to Providers "that the items or services at issue in their IDR initiation violate the NSA's eligibility requirements." *Id.* ¶ 119; *see also id.* ¶¶ 169, 179, 188. Not AGS. Further, Anthem fails to allege that it submitted objections to the IDREs through the IDR portal in thousands of arbitrations, Compl. ¶ 288, despite the regulations' clear mandate. 45 C.F.R. § 149.510(c)(1)(iii). Anthem devotes entire pages in its Complaint to describing the information that the Providers submitted to the IDR portal, yet Anthem fails to specifically allege that it submitted information to this same portal. Amazingly, Anthem goes so far as to complain that IDREs base eligibility determinations "on incomplete, one-sided information." Compl. ¶ 70. Yet Anthem alone can and must provide certain information necessary for determining eligibility, like the coverage of its own plans. *See* 29 C.F.R. § 2590.716-8(c)(4)(i)(A)(3)(iii) (Anthem "[m]ust . . . submit to the [IDRE] . . . information on the coverage area of the plan"). In other words, Anthem implicitly concedes that it did not provide crucial eligibility information from IDREs despite Anthem's clear duty to disclose the same.

Anthem next alleges that "Defendants" flooded the IDR system with disputes. Compl. ¶¶ 123–29. Again, Anthem provides no detail as to AGS's supposed role. Anthem also does not assert these claims are fraudulent in the sense that medical services were not actually performed. Nor does Anthem identify any legal authority or anything in the No Surprises Act setting some arbitrary limit on the number of disputes a Provider may bring when it is repeatedly underpaid. Indeed, the Providers could not submit a "flood" of disputes if Anthem did not first underpay a "flood" of claims. And again, Anthem does not plead that AGS directed, compelled, or controlled

the number or timing of any Provider Defendants' IDR submissions.

Next, Anthem alleges that "Defendants" (without any mention of AGS specifically) fraudulently submitted "inflated" payment offers "far above market rates." *Id.* ¶ 131. True to form, Anthem does not allege that AGS set, authored, or controlled any Provider's offer amount in any way—once more underscoring the absence of particularized allegations as to AGS. Moreover, Anthem does not explain how these "inflated" offers actually violate the No Surprises Act's text or its regulations. Nor does it acknowledge the key point: If the Providers' offers were actually so "inflated" when compared to Anthem's offers, then Anthem would win, not lose, the vast majority of the time.

Finally, Anthem alleges that "Defendants" purportedly round out their "scheme" when certified, neutral IDREs—whom Anthem often had a role in selecting—look at the evidence and the IDREs select the Providers' offer over Anthem's offer. *Id.* ¶¶ 133–36. But here as well, Anthem's omissions are telling. Anthem does not allege bribery or corruption with any IDREs. Anthem does not allege the IDREs considered impermissible factors. And Anthem does not allege why neutral IDREs routinely reject Anthem's offers.

How has Anthem responded? Anthem has *not* sought to re-open the supposedly ineligible and inflated IDR awards. Anthem has *not* challenged the credentials of any IDRE for a failure to properly assess eligibility or for considering improper factors. Instead, Anthem brought this lawsuit against AGS and the seven Providers. Anthem pleaded a shotgun assortment of claims under the federal civil RICO statute, the Virginia Business Conspiracy Statute and Consumer Protection Act, fraudulent misrepresentation, constructive fraud, civil conspiracy, conversion, ERISA, and for declaratory and injunctive relief. Anthem also asks to vacate thousands of IDR awards en masse without describing, as it must, the alleged errors in each individual award or

AGS’s supposed role in the alleged “scheme.” That failure to allege AGS-specific conduct, control, or decision-making is independently fatal under basic pleading standards. Anthem’s reliance on the phrase “in coordination with AGS” is not a substitute for well-pled, AGS-specific facts.

Accordingly, AGS now moves to dismiss Anthem’s claims.

### **LEGAL STANDARD**

Rule 12(b)(1) allows defendants to file a motion to dismiss based on a court’s lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Rule 12(b)(6) “tests the sufficiency of a complaint.” *Megaro v. McCollum*, 66 F.4th 151, 157 (4th Cir. 2023). The court accepts the complaint’s factual allegations but disregards all legal conclusions. *Harvey v. CNN, Inc.*, 48 F.4th 257, 269 (4th Cir. 2022). The factual allegations must “plausibly” allege facts sufficient to establish each element of each claim. *Id.* Moreover, because Anthem’s claims all sound in fraud, it must plead its allegations with particularity under Rule 9(b). *Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 629 (4th Cir. 2008).

### **ARGUMENT**

The Court should dismiss Anthem’s collateral attack on the IDR proceedings for multiple reasons. First, this Court lacks subject-matter jurisdiction to hear most of Anthem’s claims. Second, issue preclusion estops Anthem from re-litigating the IDREs’ eligibility determinations. Third, Anthem has not satisfied Rule 9(b). Fourth, Noerr-Pennington immunity protects petitioning activity in the IDR proceedings. And fifth, Anthem’s federal and state claims suffer additional individual defects.

**A. This Court Lacks Subject-Matter Jurisdiction over Anthem’s Claims for Monetary Damages and Prospective Relief (Counts I–VIII, X).**

This Court lacks jurisdiction over Anthem’s claims for monetary damages and prospective relief, Counts I through VIII and X. Congress routinely limits courts’ jurisdiction to hear cases, *Santos-Zacaria v. Garland*, 598 U.S. 411, 416 (2023), via “language demarcating a court’s power,” *Riley v. Bondi*, 606 U.S. 259, 274 (2025) (citation modified). And that is exactly what it has done here, limiting federal courts’ power to review claims challenging (directly or indirectly) to that commensurate with the Federal Arbitration Act (“FAA”)’s vacatur provision.

In the No Surprises Act, Congress was emphatic: “A determination of a certified IDR entity . . . *shall be binding* upon the parties involved . . . and . . . *shall not be subject to judicial review*, except in a case” that would allow a court to *vacate* the award under the Federal Arbitration Act. 42 U.S.C. § 300gg-111(c)(5)(E)(i) (emphases added); *see* 9 U.S.C. § 10(a)(1)–(4). Given this express incorporation, the *exclusive means* to challenge a binding IDR award in court is to seek vacatur for the limited reasons set forth in the FAA. *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 620 (5th Cir. 2025) (“*Guardian Flight II*”). Indeed, the “NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the” FAA that allow vacatur. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025) (“*Guardian Flight I*”). The Act’s express carve-out for judicial review to vacate in particular circumstances “powerfully suggests an intent to preclude review” that would disrupt an award in all other circumstances. *Nat’l Ass’n of Gov’t Emps. v. Fed. Lab. Rels. Auth.*, 830 F. Supp. 889, 894–95 (E.D. Va. 1993). In short, using language “demarcating [the] court’s power,” *Riley*, 606 U.S. at 274 (citation modified), the No Surprises Act borrows from the FAA both the limited bases for challenging an otherwise binding award (fraud, undue

means, corruption, etc.) and the associated limited remedy that federal courts have the power to entertain (vacatur). *See* 9 U.S.C. § 10(a).

That means that, as under the FAA, actions that seek “damages for an alleged wrongdoing that compromised an [IDR] award and caused the party injury”—under any theory—are prohibited. *See Ctr. for Excellence in Higher Educ., Inc. v. Accreditation All. of Career Schs. & Colls.*, 2025 WL 725265, at \*6 (E.D. Va. Mar. 6, 2025) (quoting *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 910 (6th Cir. 2000)). Vacatur under the circumstances described in the FAA is the “exclusive” judicial remedy for any challenge alleging improper or invalid IDR proceedings or results.<sup>11</sup> *See Decker*, 205 F.3d at 911. Thus, Anthem cannot pursue claims for money damages or prospective injunctive relief in Counts I through VIII and X.

It makes no difference that Anthem has packaged its allegations of fraud and impropriety in the IDR process under claims only indirectly challenging validity of the awards, rather than direct challenges to the awards. Courts routinely reject such collateral attacks on arbitration awards otherwise subject to circumscribed review.

The Sixth Circuit’s decision in *Corey v. New York Stock Exchange* is instructive. 691 F.2d 1205 (6th Cir. 1982). There, a plaintiff participated in an arbitration sponsored by the New York Stock Exchange (“NYSE”). *Id.* at 1207. Afterward, the plaintiff sued the NYSE for damages, alleging wrongdoing in the arbitration. *Id.* at 1208. The Sixth Circuit saw through this gambit, holding that “the federal Arbitration Act provides the exclusive remedy for challenging acts that taint an arbitration award[.]” *Id.* at 1211–12. Because the “[a]llegations of wrongdoing

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<sup>11</sup> No doubt, Anthem has administrative avenues to relief still open to it. Anthem can seek to re-open the awards if it truly believes that IDR awards were issued for ineligible claims. *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties*, *supra* n.2 at 1. Yet Anthem apparently prefers the public spectacle of a civil RICO claim.

raised by [the plaintiff] in his complaint [were] squarely within the scope of section 10 of the Arbitration Act[.],” the plaintiff could not pursue damages. *Id.* Nor could plaintiff “transform” his “impermissible collateral attack into a proper independent direct action by . . . altering the relief sought.” *Id.* at 1213.

The Fifth Circuit likewise applied this doctrine to affirm dismissal of civil RICO and state fraud claims premised on alleged fraud in an arbitration. *Gulf Petro Trading Co. v. Nigerian Nat’l Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008). In *Gulf Petro*, the plaintiff alleged that the defendants bribed the arbitrator and that the arbitrator had improper business dealings with the defendants (a far cry, of course, from filing allegedly ineligible arbitration claims). *Id.* at 749. The Fifth Circuit rejected these collateral attacks, even where the bribery and corruption allegations were analytically “separate” from the arbitration’s merits. *Id.* at 750. “Though cloaked in a variety of federal and state law claims,” the court found that the “complaint amounts to no more than a collateral attack on the [arbitration award] itself” and was thus subject to dismissal. *Id.* In so holding, the court recognized that federal law bars most claims “alleging that wrongdoing had tainted the arbitration proceedings and caused unfair awards.” *Id.* Notably, the plaintiff’s “harm was not caused by the alleged acts of wrongdoing in and of themselves”; “[r]ather, it resulted from the impact that these acts had on the” arbitration award. *Id.* The court affirmed the dismissal for lack of subject-matter jurisdiction. *Id.* at 753.

Courts within this Circuit have taken the same approach. *See, e.g., Ctr. for Excellence*, 2025 WL 725265, at \*6–7 (relying on *Corey* and *Decker* and dismissing as “an impermissible collateral attack” claims premised on bad faith during arbitration that would “effectively nullify the arbitration award”); *Fakhri v. Marriot Int’l Hotels, Inc.*, 201 F. Supp. 3d 696, 712–718 (D. Md.

2016) (quoting *Gulf Petro* and concluding that the plaintiff’s “damages claim, however creatively crafted, ... [is] ‘no more than an impermissible collateral attack on the [arbitration] award itself’”).

Like the claims in each of those decisions, Anthem’s attempts to collaterally attack the IDR awards by—“cloak[ing]” its challenges in a variety of federal and state law claims and “altering the relief sought”—should fail. *See Corey*, 691 F.2d at 1211, 1213; *Gulf Petro*, 512 F.3d at 750. At their core, Anthem’s federal and state law claims allege “wrongdoing [that supposedly] tainted the arbitration proceedings and caused unfair awards.” *Gulf Petro*, 512 F.3d at 750; *see also 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.”). Anthem’s supposed harm “resulted from the impact that these acts had on” the IDREs’ awards. *Gulf Petro*, 512 F.3d at 750; *see, e.g.*, Compl. ¶ 144 (claiming “Defendants” have incentives to seek inflated awards). And vacatur, as set forth in the No Surprises Act, is Anthem’s “exclusive remedy for challenging acts that [supposedly] taint” IDR awards. *Corey*, 691 F.2d at 1211, 1213; *see also Ctr. for Excellence*, 2025 WL 725265, at \*7. This Court thus lacks jurisdiction.

And Congress’s choice to insulate the judiciary from these types of collateral challenges makes sense. Congress passed the No Surprises Act and created the IDR process, in part, to help efficiently resolve out-of-network disputes. These cases are specialized. *Cf. Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, 2016 WL 10651033, at \*1 (C.D. Cal. May 16, 2016) (noting how set of out-of-network contract disputes represent “the most complex civil matter currently pending in the Central District of California”). So Congress directed the disputes into an IDR process that “shall be binding upon the parties involved,” 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), along with “a strictly limited form of judicial review” for challenges to the award, *Guardian Flight I*, 140 F.4th at 277. This jurisdictional limitation provides more certainty

for all parties involved in the IDR process—and avoids flooding the federal judiciary with additional complex emergency medical disputes.

In sum, this Court should dismiss for lack of subject-matter jurisdiction over Anthem’s claims for monetary damages and prospective relief in Counts I through VIII and X.

**B. The Federal Common Law of Issue Preclusion Estops Anthem from Re-Litigating the IDREs’ Dispute Eligibility Determinations (Counts I–VIII and X).**

Even if this Court had jurisdiction to consider Anthem’s claims, which it does not, issue preclusion independently requires dismissal here of all Anthem’s non-vacatur claims, Counts I through VIII and X in the Complaint. Issue preclusion “foreclos[es] relitigation of a matter that has been litigated and decided.” *Clodfelter v. Republic of Sudan*, 720 F.3d 199, 207 n.10 (4th Cir. 2013) (citation omitted). The doctrine protects litigants “from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Montana v. United States*, 440 U.S. 147, 153–54 (1979).

Issue preclusion includes not only court rulings but also administrative determinations and arbitration awards. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). Where Congress authorizes administrative adjudicators to resolve disputes, Congress is presumed to have “legislated with the expectation that the principle [of issue preclusion] will apply” to those adjudicators’ decisions except in those limited circumstances “when a statutory purpose to the contrary is evident.” *Id.* (citation omitted). Courts within the Fourth Circuit routinely find issue preclusion applicable to issues decided in arbitration. *See, e.g., Design Gaps, Inc. v. Distinctive Design & Constr. LLC*, 162 F.4th 452, 475–79 (4th Cir. 2025) (affirming collateral estoppel applies to arbitrator’s findings); *Smith v. Walmart, Inc.*, 2023 WL 5215376, at \*6 (W.D. Va. Aug. 14, 2023) (citing *Little Six Corp. v. United Mine Workers of Am., Loc. Union No. 8332*, 701 F.2d

26, 29 (4th Cir. 1983) (“[N]umerous cases support the application of *res judicata* or collateral estoppel when the losing party in an arbitration proceeding seeks to reopen its case in federal court”)); *see also* 18B Charles A. Wright, et al., *Federal Practice & Procedure* § 4475.1 (3d ed.) (“If any party dissatisfied with the award were left free to pursue independent judicial proceedings on the same claim or defenses, arbitration would be substantially worthless.”).

Federal common law determines the preclusive effect of a federal tribunal’s decision, like an IDRE’s determinations. *See Taylor v. Sturgell*, 553 U.S. 880, 891 (2008). Under federal law, issue preclusion attaches when used as a defense if: “(1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding.” *In re Gardasil Prods. Liab. Litig.*, 151 F.4th 178, 196 (4th Cir. 2025).

In this case, issue preclusion prohibits Anthem from re-litigating in this forum the IDRE eligibility determinations previously rendered. Congress did not disturb the presumption of preclusion. *See B & B Hardware*, 575 U.S. at 148. And all five issue preclusion elements are satisfied. First, the eligibility determination by the IDRE is identical to the issue raised here—eligibility is the cornerstone and first step of Anthem’s fraud-scheme theory. Compl. ¶¶ 115–120. Second, for each contested award, the IDRE ruled against Anthem on eligibility. *Id.* Third, every IDR award necessarily relies on an eligibility finding; ineligible disputes did not result in awards. 45 C.F.R. § 149.510(c)(1)(v). Fourth, each IDR award represents a final judgment on the merits. 42 U.S.C. § 300gg-111(c)(5)(E) (stating that the “[e]ffects of [an IDR] determination” are a “binding” award). Fifth, Anthem had a full and fair opportunity to contest eligibility in each IDR

proceeding. 45 C.F.R. § 149.510(c)(1)(iii); *see Design Gaps, Inc.*, 162 F.4th at 478–79 (holding that party had full and fair opportunity to litigate issues in arbitration); Compl. ¶¶ 64–68, 116–19, 130, 161–277 (Anthem admitting it knew disputes were ineligible); *supra* at 3–6 (discussing many times where an insurer like Anthem can—and must—object to eligibility through the IDR portal during the IDR process). Both under the No Surprises Act’s text and under federal common law, then, this Court is precluded from entertaining Anthem’s claims for monetary and prospective relief because they are grounded in previously litigated determinations of IDR eligibility.

**C. Anthem Has Not Alleged Fraud with the Required Particularity Under Rule 9(b) (Counts I–X).**

All of Anthem’s claims, including its vacatur claim, also fail to allege fraud with the particularity required under Rule 9(b). Under Rule 9(b), a complaint of fraud, at a minimum, “must allege the time, place, and content of the alleged misrepresentation; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud.” *U.S. ex rel. Godfrey v. KBR, Inc.*, 360 F. App’x 407, 410 (4th Cir. 2010) (citation modified); *see also MSP Recovery Claims, Series LLC v. Lundbeck LLC*, 130 F.4th 91, 106 (4th Cir. 2025), *cert. denied*, 2025 WL 3260199 (U.S. Nov. 24, 2025); *U.S. ex rel. Day v. Boeing*, 777 F. Supp. 3d 553, 596 (E.D. Va. 2025). And it must make those allegations specific to each defendant. *See Corder v. Antero Res. Corp.*, 57 F.4th 384, 403 (4th Cir. 2023). Rule 9(b)’s “particularity standard is steep[.]” *MSP Recovery Claims*, 130 F.4th at 106.

Rule 9(b) plays a vital role in vetting RICO claims. Indeed, “[t]he Supreme Court has described the penalties authorized by RICO as ‘drastic.’” *US Airline Pilots Ass’n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010). As a result, the “Fourth Circuit has expressed caution ‘about basing a RICO claim on predicate acts of mail and wire fraud’” and “will not lightly permit ... fraud disputes to be transformed into federal RICO claims.” *Harlow v. Wells Fargo & Co.*, 608

F. Supp. 3d 377, 384 n.1 (W.D. Va. 2022) (quoting *Al-Abood ex rel. Al-Abood v. El-Shamari*, 217 F.3d 225, 238 (4th Cir. 2000); *Flip Mortg. Corp. v. McElhone*, 841 F.2d 531, 538 (4th Cir. 1988)). “This is particularly so when wire fraud is only conducted in one way, rather than in an ‘extensive or varied manner.’” *FX Aviation Cap. LLC v. Guerrero*, 2025 WL 521303, at \*9 (4th Cir. Feb. 18, 2025) (citation omitted). Accordingly, “[w]hen mail and wire fraud are asserted as the predicate acts for a civil RICO claim,” a complaint brought “against multiple defendants [must] identify[] each individual defendant’s participation in the alleged fraud.” *Kimberlin v. Nat’l Bloggers Club*, 2015 WL 1242763, at \*4 (D. Md. Mar. 17, 2015) (citations omitted).

**1. Anthem has not particularly alleged AGS’s role, much less any fraud.**

Anthem baldly asserts that thousands of individual proceedings were supposedly subject to a fraud without providing the requisite details to sustain such wide-ranging claims, especially as it pertains to AGS, whom Anthem specifically addresses in only *four* of its 385 paragraphs. Compl. ¶¶ 155–158. Anthem failed to make allegations of fraud particular to AGS and failed to plead with particularity that any alleged misrepresentations proximately caused Anthem’s damages. Anthem thus fails to state a claim under the Rule 9(b) pleading standard.

First, Anthem improperly lumps AGS in with all of the other defendants—and “[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). Under Rule 9(b), a plaintiff cannot plead “undifferentiated allegations” of unlawful activity against all defendants. *U.S. ex rel. Ahumada v. NISH*, 756 F.3d 268, 281 n.9 (4th Cir. 2014). Put another way, a plaintiff may not “impermissibl[y] aggregat[e] defendants without specifically alleging which defendant was responsible for which act.” *Corder*, 57 F.4th at 403.

Rule 9(b) requires that plaintiff plead each element of each claim against each defendant. *Smith v. Chapman*, 2015 WL 5039533, at \*7 (W.D.N.C. Aug. 26, 2015); *see also Corder*, 57 F.4th

at 403. In doing so, the plaintiff must “inform each defendant of the nature of [its] alleged participation in the fraud.” *Corder*, 57 F.4th at 403. Specifically, a plaintiff must plead “when *each* defendant ... learned that a statement was false, how *that* defendant learned that the statement was false, and *the particular* document or other source of information from which the defendant came to know that the statement was false.” *Iron Workers*, 432 F. Supp. 2d at 594 (emphases in original). In other words, plausible fraud allegations against one defendant will not bootstrap deficient allegations against another.

This principle applies with special force to RICO cases alleging “predicate acts of mail and wire fraud,” which require a plaintiff to “allege the time, place, and contents of any of the alleged mail and wire communications,” “the identity of the person making the misrepresentation and what he obtained thereby[,]” and, where “multiple defendants are involved,” “clearly identify ‘which Defendant played which role.’” *Kimberlin*, 2015 WL 1242763, at \*4–5; *see also Chapman*, 2015 WL 5039533, at \*7 (“Specifically as to RICO cases where fraud is alleged, if multiple defendants are involved in the alleged fraud, it is especially important that the fraud be particularized as to each one of them.” (citation modified)); *Balt. Flips Israel 2020 LLC v. Yosef*, 769 F. Supp. 3d 370, 403–04 (D. Md. 2025) (dismissing RICO claims because plaintiffs failed to specify the “time, place, or content” of the wire fraud or “when the[] wire transfers were made”).

Here, despite suing eight defendants, Anthem repeatedly alleges that “Defendants” engaged in a racketeering scheme, without specifying each defendant’s specific role in causing the *thousands* of supposedly fraudulent IDR awards. Compl. ¶¶ 2–11, 109–140. In fact, Anthem’s Complaint plainly states that AGS did not make the allegedly false attestations. Instead, the “attestations and cover letters” are “signed in the name of SCP employees on behalf of the Provider Defendants.” Compl. ¶ 157. These vague and terse allegations fall woefully short of alleging a

fraud claim with particularity against AGS.

Beyond alleging that “Defendants” submitted claims to the IDR process, Anthem never specifies what *AGS* actually *did*—only that AGS “provided a tool” for health care providers to submit claims to the IDR process as required by federal law. Anthem never alleges that AGS created falsified medical bills for submission as the billing and revenue cycle tool—let alone which ones or when. Anthem never alleges that AGS was instructed to file ineligible IDR proceedings or submit inflated offers—let alone when it was instructed or by whom. And Anthem never alleges that AGS participated in any particular meetings or communications to plan and further this alleged scheme—let alone when such meetings occurred or what AGS stood to gain. Anthem’s bare-bones allegations are insufficient to demonstrate what action each Defendant took to further the alleged “scheme.” *See Grant v. Shapiro & Burson, LLP*, 871 F. Supp. 2d 462, 474–75 (D. Md. 2012) (finding fraud complaint deficient that failed to “clearly identify ‘which Defendant played which role’” in forging fraudulent documents); *De Silva v. Am. Brokers Conducit*, 2015 WL 275769, at \*4 (D. Md. Jan. 21, 2015) (same). As one court put it, these allegations are “little more than a bare assertion that [each of the Providers] somehow share blame for [another defendant’s] conduct, with no attempt to specify their individualized involvement. Rule 9(b) requires more—much more.” *In re Pac One, Inc.*, 2007 WL 2083817, at \*8 (N.D. Ga. July 17, 2007).

Anthem cannot side-step this defect by merely alleging that documents—“attestations and cover letters”—supposedly containing false statements are transmitted through automated processes provided by AGS for IDR. *See* Compl. ¶ 157. Indeed, as the Eleventh Circuit recently made clear, the No Surprises Act does not alter Rule 9(b)’s steep requirement that plaintiffs allege “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.”

*See Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1121–23 (11th Cir. 2025) (dismissing attempt to attack awards issued under the No Surprises Act’s IDR process) (citation omitted). But again, Anthem does not even attempt to allege the time and place of each statement or the manner in which it misled Anthem as to the “thousands” of unidentified IDR rulings.

At most, Anthem alleges the person responsible for making the allegedly false statements, and it is not AGS: “attestations and cover letters” are “signed in the name of *SCP employees on behalf of the Provider Defendants.*” Compl. ¶ 157 (emphasis added). Moreover, even if those did contain false statements, Anthem includes no allegations regarding *when* AGS purportedly learned they were false, *how* AGS learned they were false, or that AGS *intended* to submit false claims—and certainly none with any particularity.<sup>12</sup> *Iron Workers*, 432 F. Supp. 2d at 594. Instead, Anthem effectively admits it did not tell AGS: it repeatedly asserts that it sent remittance advices—stating that state law governed—to entities *other than AGS*. *See, e.g.*, Compl. ¶¶ 169, 179, 188. In the end, Anthem simply filed a complaint bereft of details in hopes of obtaining intrusive and expensive discovery on thousands of individual arbitrations. Rule 9(b) does not permit such fishing expeditions.

The Fourth Circuit’s holding in *U.S. ex rel. Complin v. North Carolina Baptist Hospital*, 818 F. App’x 179 (4th Cir. 2020) is also instructive. There, the court emphasized that it was not enough to make a “general and conclusory allegation that [Defendants] ‘knowingly’ submitted false claims.” *Id.* at 183. Instead, a plaintiff must “set[] forth specific facts that support an inference of scienter”—for instance, if “employees had conversations about regulatory violations,

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<sup>12</sup> Indeed, while Anthem repeatedly asserts that it sent remittance advices—stating that state law governed—to entities *other than AGS*, *see, e.g.*, Compl. ¶¶ 169, 179, 188, it conspicuously never alleges that it put AGS on notice.

. . . or that the [Defendants] instructed their employees to ignore concerns about potential violations, or anything else to indicate that the [Defendants] were aware even of the potential for a violation[.]” *Id.* (internal quotation marks omitted). Thus, the Fourth Circuit affirmed dismissal of the plaintiff’s complaint for failure to plead the defendant actually knew of the allegedly false statement. So too here Anthem fails to plead any allegations—let alone allegations with the required specificity—that AGS actually knew about any false statement.

**2. Anthem has not particularly alleged proximate causation as to AGS.**

Anthem has likewise failed to plead with particularity that the alleged misrepresentations proximately caused Anthem harm. Proximate causation requires “some direct relation between the injury asserted and the injurious conduct alleged.” *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). For every award being challenged, a neutral IDRE performed an independent investigation, independently assessed and determined eligibility, and then “caused” the supposed injury by selecting the higher offer. *See supra* at 3–4. In doing so, the IDREs broke any causal chain between the supposed eligibility misrepresentations and the awards. *See Kane v. Lewis*, 604 F. App’x 229, 235 (4th Cir. 2015) (“[S]ubsequent acts of independent decision-makers . . . may constitute intervening superseding causes that break the causal chain[.]”); *see also NOCO Co. v. OJ Com., LLC*, 35 F.4th 475, 485 (6th Cir. 2022) (“When a third party that could have prevented the harm acts to cause the harm instead, then the chain of causation is broken.”); *Fletcher v. Pizza Hut of Am., Inc.*, 406 F. App’x 785, 789–90 (4th Cir. 2011) (“By entirely supplanting an initial act . . ., a superseding cause alone causes the plaintiff’s injury and is the only proximate cause of that injury.”).

Anthem also cannot show proximate causation because 45 C.F.R. § 149.510(c)(1)(iii) obligates Anthem to raise any eligibility defect, to the extent one existed, *to the IDRE*. Anthem glosses over this requirement. So even assuming ineligible claims were submitted, Anthem

(allegedly) had the *information*, the *means*, and the *obligation* to contest eligibility, yet failed to submit that information to the IDRE as required. *See* Compl. ¶¶ 64–68, 116–19, 130, 161–277.

If Anthem did not provide these eligibility objections to the IDREs—which Anthem seemingly concedes by alleging it was “impossible for Anthem to reasonably identify and object to all ineligible disputes”; Compl. ¶ 288—Anthem slept on its rights and proximately caused its own supposed injury. *Id.* ¶ 70. “When the plaintiff’s own conduct could have prevented the harm but didn’t, the plaintiff’s actions are considered a superseding cause.” *NOCO*, 35 F.4th at 486; *Kane*, 604 F. App’x at 235–36 (barring compensatory damages where plaintiff’s conduct “constitute[d] a superseding cause of his death”). And even today, Anthem could seek to re-open and undo awards for “jurisdictional error[s]” like eligibility.<sup>13</sup> It does not allege that it has done so, because it has not, further exposing the improper motives driving this litigation.

Finally, Anthem theorizes that the “Defendants” submitted “inflat[ed]” offers. Compl. ¶ 131. Anthem fails to allege how inflated bids proximately caused injury when, in every case, the IDRE remained free to select Anthem’s competing and lower proposal. In fact, Anthem alleges that neutral IDREs rejected proposals from insurers (like Anthem) 85 percent of the time after seeing the evidence. *Id.* ¶ 133. Here as well, IDREs broke the causal chain. *NOCO*, 35 F.4th at 485–86.

**D. Anthem Has Not Plausibly Alleged Civil RICO Claims Against AGS (Counts I and II).**

Even beyond the fatal flaws noted above, Anthem has failed to plausibly allege either civil RICO claim, Counts I and II, on additional grounds. To plead a civil RICO claim, a plaintiff must adequately plead: “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering

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<sup>13</sup> *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties*, *supra* n.2 at 1, 3.

activity.” *MSP Recovery Claims*, 130 F.4th at 105. Again, the Fourth Circuit is “cautious about basing a RICO claim on predicate acts of mail and wire fraud.” *Al-Abood*, 217 F.3d at 238. Anthem predicates its claim on wire fraud. Compl. ¶¶ 278–82.

Anthem’s civil RICO claim falls short for at least three reasons. First, Anthem’s RICO wire fraud allegations suffer the Rule 9(b) pleading defects described above. *Supra* Part C.

Second, Anthem has not plausibly alleged that AGS directed the alleged enterprise. For civil RICO claims, the defendant must take “*some* part in directing the enterprise’s affairs.” *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (emphasis in original). “Indeed, simply 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). “[I]nstead, the individual must have participated in the operation and management of the enterprise itself.” *Id.*; *Holland v. Cole Nat’l Corp.*, 2005 WL 1242349, at \*12 (W.D. Va. May 24, 2005) (following *Goren*). 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).

The *Rivers* case illustrates this point. In *Rivers*, the defendant-banker was sued under RICO because he “maintained customer accounts, accepted deposits, and wired customers’ funds to accounts at other financial institutions” for RICO participants. *Id.* at \*14. Nonetheless, the court concluded that the defendant was not a director in the RICO enterprise, noting that “[b]ankers do not become racketeers by acting like bankers[.]” *Id.* The court explained that “[f]urnishing a client with ordinary professional assistance ... will not normally rise to the level of participation required by *Reves*’s operation-and-management test—even when the client happens to be a RICO

enterprise.” *Id.* (internal quotation marks omitted). Thus, even providing banking services that aided in the perpetration of the fraudulent scheme does “not rise to the level of directing an enterprise[.]” *Id.*

Nowhere does Anthem allege, let alone allege with the required particularity, that AGS made decisions or “direct[ed] the enterprise’s affairs.” *Reves*, 507 U.S. at 179. Just the opposite—Anthem alleges that AGS merely provides “robotic process automation tools” for the other Defendants. Compl. ¶¶ 9, 112. Indeed, this is precisely the sort 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. At best, Anthem alleges that AGS “simply perform[ed] services for an enterprise”—which, “even with knowledge of the enterprise’s illicit nature, is not enough to subject an individual to RICO liability[.]” *Goren*, 156 F.3d at 728.

In short, AGS is alleged to be nothing more than the “unwitting tool.” *Rivers*, 2020 WL 1443723, at \*12. And this is by Anthem’s own admission—it describes AGS’s functions as “tools” no less than six separate times throughout its complaint. Compl. ¶¶ 9, 112, 155, 156, 157, 158.<sup>14</sup>

Third, litigation activities, like IDR proceedings, cannot give rise to a civil RICO claim absent corruption. *See Kim v. Kimm*, 884 F.3d 98, 104–05 (2d Cir. 2018) (collecting cases); *cf. Kimberlin*, 2015 WL 1242763, at \*8 (dismissing civil RICO claim predicated on “the mere act of filing a lawsuit and demanding a settlement agreement”); *Miller v. Dogwood Valley Citizens Ass’n, Inc.*, 2008 WL 3992350, at \*5 (W.D. Va. Aug. 28, 2008) (similar), *aff’d*, 346 F. App’x 925 (4th Cir. 2009). Otherwise, a plaintiff could just call a defendant’s prior suit “fraudulent” and then “relitigate [the] entire case in federal court[.]” *Kim*, 884 F.3d at 104–05. “The RICO statute

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<sup>14</sup> Anthem’s sole conclusory allegation that “AGS serves as an operational partner of the enterprise” cannot overcome these deficiencies—or reality. *Id.* at ¶ 144; *see Langford v. Joyner*, 62 F.4th 122, 124 (4th Cir. 2023) (“[T]he court need not accept ... ‘conclusory statements.’”).

obviously was not meant to endorse any such occurrence.” *Id.* Here, Anthem tells us that the fraud scheme entailed false IDR submissions. IDR arbitrations are government-sponsored adjudications before neutral decision-makers, meaning Anthem effectively bases its civil RICO claim on supposedly fraudulent litigation activities. But “the overwhelming weight of authority” rejects this approach. *Pompy v. Moore*, 2024 WL 845859, at \*15–16 (E.D. Mich. Feb. 28, 2024); *see also Kimberlin*, 2015 WL 1242763, at \*8 (citing cases). Anthem makes no allegation that IDREs have succumbed to corruption.

The point is further emphasized by considering how Anthem’s position would apply had its repeated losses occurred in state court, rather than arbitration. Imagine if the Defendants had brought multiple lawsuits in state court against Anthem over underpayments for which Anthem suspected the court lacked jurisdiction, and Anthem either failed to raise jurisdictional arguments in those state proceedings or did raise them and repeatedly lost. Could Anthem thereafter skip over to federal court and bring a civil RICO case against the Defendants to re-litigate the state courts’ determinations regarding their own jurisdiction? Surely not.

Finally, Anthem’s civil RICO conspiracy claim does not even address that claim’s unique elements and should be dismissed for the same reasons as Anthem’s civil RICO claim. *See MSP Recovery Claims*, 130 F.4th at 111 n.12 (“Because the pleadings do not state a substantive RICO claim under § 1962(c), Plaintiffs’ RICO conspiracy claim fails as well.”).

**E. The Noerr-Pennington Doctrine Also Bars Anthem’s Claims (Counts I–VIII and X).**

Anthem’s claims for monetary and prospective injunctive relief, Counts I through VIII and X, also fail for another reason: they are barred by the Noerr-Pennington doctrine. This longstanding First Amendment doctrine safeguards the right to petition. *See United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 669–70 (1965). It provides immunity for petitioning activity—including for filings to agencies and courts. *See BE & K Constr. Co. v. NLRB*, 536 U.S.

516, 530 (2002); *Navient Sols., LLC v. Lohman*, 136 F.4th 518, 522 (4th Cir. 2025). The doctrine also protects against any claim based on that petitioning, including civil RICO claims and state tort claims. *See, e.g., Navient Sols.*, 136 F.4th at 521, 524 (applying Noerr-Pennington protections to RICO, RICO conspiracy, tortious interference with contract, and fraud claims). Moreover, the protection extends to claims that allege the same essential facts and “share a primary legal issue.” *Id.* at 521–22, 524 n.4.

Here, the Noerr-Pennington doctrine shields petitioning through the IDR process. To start, the IDR process is a government-established adjudication before a neutral decision-maker. 42 U.S.C. § 300gg-111(c). So the IDR procedure has the character of an agency adjudication. *See Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 502, 506–07 (1988). And the same core allegations regarding IDR misrepresentations animate each of Anthem’s claims. Thus, Noerr-Pennington provides presumptive immunity against Anthem’s claims. *See Navient Sols.*, 136 F.4th at 521–22, 524 n.4.

No exception to this longstanding doctrine applies. While courts have recognized an “extraordinarily narrow” exception for sham petitioning, that does not save Anthem’s claims. *U.S. Futures Exch., L.L.C. v. Bd. of Trade of City of Chi., Inc.*, 953 F.3d 955, 963 (7th Cir. 2020); *see Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014). Sham petitioning occurs when “parties use the petitioning process, rather than the outcome of that process, as [a] weapon.” *Knology, Inc. v. Insight Commc’ns Co.*, 393 F.3d 656, 658 (6th Cir. 2004); *see also City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 380 (1991). So a defendant loses immunity if his petition is “‘not genuinely aimed at procuring favorable government action’ at all.” *Omni*, 499 U.S. at 380 (citation omitted). For sham adjudications, the key inquiry is whether the petitioning is “objectively baseless in the sense that no reasonable litigant could realistically

expect success on the merits.” *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60 (1993) (*PRE*). “Where ‘claims are based on activities shielded by Noerr-Pennington immunity, the plaintiff must plead the sham litigation with specificity.’” *CareFirst of Md. v. Johnson & Johnson*, 2025 WL 3486761, at \*9 (E.D. Va. Oct. 10, 2025) (citation omitted).

Critically, a “winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham.” 508 U.S. at 60 n.5. In other words, “[i]f a litigant can persuade a neutral judge or jury that it is entitled to legal relief from the conduct of another based upon the law and facts, that suit cannot be a sham under the Noerr-Pennington doctrine.” *Eden Hannon & Co. v. Sumitomo Tr. & Banking Co.*, 914 F.2d 556, 565 (4th Cir. 1990) (emphasis added); *A Fisherman’s Best, Inc. v. Recreational Fishing All.*, 310 F.3d 183, 191 (4th Cir. 2002) (similar). Anthem bears the burden to show that a Noerr-Pennington exception applies. *Id.*

Given this combined burden and presumption, it is unsurprising that courts routinely dismiss claims under the Noerr-Pennington doctrine. *See, e.g., RE/MAX LLC v. M.L. Jones & Assocs., Ltd.*, 2013 WL 4647517, at \*4 (E.D.N.C. Aug. 29, 2013) (“[Counterclaimants] have failed to plausibly allege that ‘no reasonable litigation could realistically expect success’ based on the allegations in the complaint.”); *Nursing Registry, Inc. v. E. N.C. Reg’l Emergency Med. Servs. Consortium, Inc.*, 959 F. Supp. 298, 305 (E.D.N.C. 1997); *Syngenta Crop Prot., LLC v. Atticus, LLC*, 2022 WL 842938, at \*4–5 (E.D.N.C. Mar. 21, 2022); *Mylan Lab’ys, Inc. v. Akzo, N.V.*, 770 F. Supp. 1053, 1064 (D. Md. 1991); *WCCB-TV, Inc. v. Telerep, Inc.*, 601 F. Supp. 284, 286 (W.D.N.C. 1984).

A recent federal court decision illustrates the point. In *EQMD, Inc. v. Farm Bureau Gen. Ins. Co.*, following state-court disputes over medical bills, a company brought a civil RICO claim against insurers. 2021 WL 843145, at \*1–2 (E.D. Mich. Mar. 5, 2021). The company alleged that

the insurers had fraudulently misrepresented in those state actions that the company operated as an unlicensed pharmacy. *Id.* The insurers moved to dismiss, citing Noerr-Pennington. *Id.* at \*4. The court agreed. *Id.* at \*8. After finding that Noerr-Pennington applied, the court held that the company had not satisfied a sham exception. *Id.* at \*5–8. The insurers’ state-court suits were not “objectively baseless.” *Id.* at \*6. Rather, the company “negate[d]” any such showing by admitting the insurers “have enjoyed repeated success” in court. *Id.* Indeed, “[t]he very premise of [the company’s] complaint [was] that it has been wronged due to this repeated success.” *Id.* The court dismissed.

Noerr-Pennington likewise mandates dismissal here. Anthem does not, and cannot, plausibly allege that the IDR proceedings were “not genuinely aimed at procuring favorable government action.” *Omni*, 499 U.S. at 380. Nor has Anthem plausibly alleged that “no reasonable litigant could realistically expect success” in the IDR proceedings. *PRE*, 508 U.S. at 60. Just the opposite. Anthem openly admits that the Providers *consistently prevailed*, Compl. ¶¶ 133–34, 139—that is, that they “have enjoyed repeated success in” IDR proceedings. *See EQMD*, 2021 WL 843145 at \*6. Indeed, “[t]he very premise of [Anthem’s] complaint is that it has been wronged due to this repeated success.” *Id.*; *see PRE*, 508 U.S. at 60 n.5 (“A winning [IDR proceeding] is by definition a reasonable effort at petitioning for redress and therefore not a sham.”). Put simply, Anthem’s “repeated reliance upon [Defendants’] alleged successful petitioning of governmental actors cannot be reconciled with an argument that [Defendants’] efforts were in any sense a sham.” *BCD, LLC v. BMW Mfg. Co.*, 2008 WL 304878, at \*14 (D.S.C. Jan. 31, 2008), *aff’d*, 360 F. App’x 428 (4th Cir. 2010).

And to the extent Anthem contests whether some of the claims were *eligible*, Anthem had the relevant information for contesting eligibility—and the obligation to contest it. *Supra* Section

C.2. Yet the IDREs' awards necessarily meant that they found eligibility on the information provided to them. Indeed, Anthem's supposed "wire fraud" examples only further prove why this Court should dismiss Anthem's claims. *See* Compl. ¶¶ 161–277. In each, Anthem supposedly had an objection to eligibility. And in each, IDREs found eligibility satisfied and ruled for the Providers. So "by [Anthem's] own admission, [the Providers] petitioned for a specific outcome from the government and succeeded; *this is the precise situation that falls outside of the sham exception.*" *VIBO Corp. v. Conway*, 669 F.3d 675, 686 (6th Cir. 2012) (emphasis added); *see also Eden Hannon*, 914 F.2d at 565. This Court should dismiss Counts I through VIII and X on Noerr-Pennington immunity grounds.

**F. Anthem Has Not Plausibly Alleged a Claim to Vacate the IDR Awards En Masse (Count IX).**

Anthem likewise fails to plausibly allege a claim against AGS for vacatur in Count IX. The No Surprises Act's exclusive remedy of vacatur expressly incorporates the reasons for vacatur set forth in the Federal Arbitration Act. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); 9 U.S.C. § 10(a)(1)–(4); *Guardian Flight II*, 140 F.4th at 620. This Court lacks jurisdiction to review a challenge to (and potentially vacate) these awards in any other way. *See Guardian Flight II*, 140 F.4th at 620; *supra* Part A. So Anthem's vacatur request must satisfy the FAA's rigorous requirements—the exclusive basis for vacating an IDR award. Anthem tries to satisfy this standard in two ways. Both fail.

Anthem first contends that the awards should be vacated for fraud or undue means. Compl. ¶¶ 372, 375; 9 U.S.C. § 10(a)(1). That standard requires plaintiffs to demonstrate that the alleged fraud or undue means was "(1) not discoverable upon the exercise of due diligence prior to the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear

and convincing evidence.” *MCI Constructors, LLC v. City of Greensboro*, 610 F.3d 849, 858 (4th Cir. 2010).

Anthem’s allegations fall short under any pleading standard, let alone the heightened Rule 9(b) standard applicable to fraud claims. *Supra* Section C. Anthem *admits* it “discover[ed] [the fraud] prior to or during” the IDR proceedings. *Belmont Partners, LLC v. Mina Mar Grp., Inc.*, 741 F. Supp. 2d 743, 753 (W.D. Va. 2010). *See* Compl. ¶¶ 64–68, 116–19, 130, 161–277. In fact, Anthem “directly notific[e]d [the Providers] that the items or services at issue in their IDR initiation” were ineligible. *Id.* ¶ 119. Anthem’s supposed “wire fraud” examples only further prove its knowledge. *See id.* ¶¶ 161–277. It thus cannot show that the fraud was “not discoverable upon the exercise of due diligence prior to the arbitration.” *MCI Constructors, LLC*, 610 F.3d at 858.

Anthem also suggests that the IDREs exceeded their authority under 9 U.S.C. § 10(a)(4). Compl. ¶ 373. “A party seeking to vacate an award on the ground that arbitrators exceeded their authority ‘bears [a] heavy burden.’” *Gulfstream Aerospace Corp. v. Optical Air Data Sys., LLC*, 517 F. Supp. 3d 542, 557 (E.D. Va. 2021) (quoting *Jones v. Dancel*, 792 F.3d 395, 405 (4th Cir. 2015)) (citation omitted). The inquiry concerns arbitrability—whether an issue is within “the scope of arbitrable issues.” *Three S Del., Inc. v. DataQuick Info. Sys, Inc.*, 492 F.3d 520, 531 (4th Cir. 2007). It is not simply whether the arbitrator decided those questions correctly—“[l]egal error is not a ground for vacating an arbitration award.” *Constellium Rolled Prods. Ravenswood, LLC v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union*, 18 F.4th 736, 741 (4th Cir. 2021). Moreover, “[a]ny doubts concerning the scope of arbitrable issues ... are to be resolved in favor of the arbitrators’ authority as a matter of federal law and policy.” *DataQuick*, 492 F.3d at 531. Here, Congress unquestionably gave IDREs authority to

make eligibility and payment determinations.

Anthem seeks a blanket vacatur of “thousands” of IDR awards since January 2024. Compl. ¶ 10. Anthem does not even bother to identify the precise number of awards it is challenging, let alone identify each award and the supposed error that affected each individual proceeding. Anthem cannot plead vacatur en masse through generalized fraud-scheme allegations. *See Reach Air*, 160 F.4th at 1121–23 (affirming dismissal of attempt to vacate NSA IDR awards).

**G. Anthem Cannot Bring an ERISA Claim to Challenge IDR Proceedings (Count X).**

Anthem impermissibly attempts to use ERISA, Count X, against AGS to evade the No Surprises Act’s limits on judicial review. The ERISA provisions that Anthem’s complaint invokes, found in § 1185e, are the provisions added by the No Surprises Act. *See Tex. Med. Ass’n v. U.S. Dep’t of HHS*, 110 F.4th 762, 768 n.6 (5th Cir. 2024); 29 U.S.C. § 1185e. But that provision limits judicial review of IDR determinations solely to vacatur as described in the Federal Arbitration Act. *Supra* Part A. And it is common “statutory construction that the specific governs the general.” *Morales v. TWA, Inc.*, 504 U.S. 374, 384 (1992). Congress’s choice to expressly limit judicial review in the No Surprises Act confirms it did not intend to allow such review via other generalized provisions. Anthem thus cannot use ERISA’s general cause of action to override the Act’s specific limits on review. Its ERISA claim should be dismissed.

**H. The Court Should Dismiss Anthem’s State Law Claims (Counts III–VIII).**

Anthem’s state law claims should be dismissed for the independent reason that Anthem fails to plausibly alleged those claims against AGS, Counts III through VIII. As an initial matter, Anthem’s state claims suffer the defects already discussed. *Supra* Parts A–D. Yet, Anthem’s state claims suffer individual flaws as well.

**1. Virginia Business Conspiracy Claim (Count III)**

To start, Anthem’s Virginia Business Conspiracy claim (Count III) against AGS fails for at least three reasons. First, allegations brought under Virginia Code § 18.2–499 for “business conspiracy, like fraud, must be pleaded with particularity, and with more than ‘mere conclusory language.’” *Scharpenberg v. Carrington*, 686 F. Supp. 2d 655, 661 (E.D. Va. 2010). Anthem’s “[f]ailure to plead fraud with Rule 9(b)’s required particularity is treated as a failure to state a claim.” *Id.* at 662; *supra* Part C. Second, Virginia Code § 18.2–499 requires plaintiffs to plead that defendants “acted out of a desire to injure [the plaintiffs] in their business,” as opposed to merely “act[ing] for [a] legitimate business purpose” such as “protecting [the] ability to collect [a] judgment[.]” *Peterson v. Cooley*, 142 F.3d 181, 187–88 (4th Cir. 1998). Anthem’s failure to make any such allegations about Defendants’ desire to injure—as opposed to their acting with the legitimate business purpose of protecting their rights to fair medical payment under the No Surprises Act—is thus dispositive. Third, to bring a claim under § 18.2–499, Anthem “must point to a violation of a legally protected interest in order to succeed in its suit.” *Va. Vermiculite, Ltd. v. Historic Green Springs, Inc.*, 307 F.3d 277, 284 (4th Cir. 2002). Yet Anthem does not have a legally protected interest in dodging the mandatory IDR process explicitly prescribed by Congress to address payment disputes between insurers and providers—particularly when that process, at the outset, accounts for determining whether it applies to the specific dispute. *Supra* Part A. Anthem has not plausibly alleged this claim.

**2. Virginia Consumer Protection Act (“VCPA”) Claim (Count IV)**

Anthem’s Virginia Consumer Protection Act (“VCPA”) claim (Count IV) likewise fails. “To properly state a cause of action under the VCPA, [a plaintiff] must allege (1) fraud, (2) by a supplier, (3) in a consumer transaction.” *Hamilton v. Boddie-Noell Enters., Inc.*, 88 F. Supp. 3d 588, 591 (W.D. Va. 2015). Anthem strikes out on all three. First, fraud was not particularly

alleged. *Supra* Part C. Nor does Anthem allege that AGS is a supplier under the VCPA in relation to Anthem. Finally, Anthem does not allege a consumer transaction—which, as relevant, the VCPA defines as a transaction for “goods or services to be used primarily for *personal, family, or household purposes*.” Va. Code § 59.1-198 (emphasis added). This is no surprise, as the “VCPA’s express legislative purpose [is] ‘to promote fair and ethical standards of dealings between suppliers and the *consuming* public,’ rather than dealings between commercial entities.” *Benkirane v. City Concrete Corp.*, 918 S.E.2d 274, 282 (Va. Ct. App. 2025) (emphasis in original) (citation omitted). In short, Anthem’s VCPA claim fails on all fronts.

### **3. Fraudulent Misrepresentation and Constructive Fraud Claims (Counts V and VI)**

Anthem’s fraudulent misrepresentation and constructive fraud claims fare no better. Both claims require “reliance by the party misled.” *Glaser v. Enzo Biochem, Inc.*, 464 F.3d 474, 476 (4th Cir. 2006); *Cagle v. CitiMortgage, Inc.*, 2015 WL 2063990, at \*5 (E.D. Va. May 1, 2015). More specifically, under Virginia law, “both actual fraud and constructive fraud claims require proof of reliance by the injured party, *as opposed to reliance by a third party*.” *RBA Cap., LP v. Anonick*, 2009 WL 960090, at \*4 (E.D. Va. Apr. 8, 2009) (emphasis added); *see also Bailey v. Ethicon, Inc.*, 2021 WL 2345357, at \*6 (W.D. Va. June 8, 2021) (same). Yet Anthem itself repeatedly concedes that it believed the disputes were ineligible—thereby disclaiming any reliance. *See* Compl. ¶¶ 64–68, 116–19, 130, 161–277; *Qiu v. Huang*, 885 S.E.2d 503, 513 (Va. Ct. App. 2023) (“[T]he allegedly false statement must be not only ‘relied on’ but also ‘*believed*’ by the party claiming fraud[.]”) (emphasis added). These concessions doom Anthem’s claims.<sup>15</sup>

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<sup>15</sup> The afterthought instances where Anthem allegedly did not have certain documentation to affirmatively crosscheck eligibility do not salvage its claims. Compl. ¶ 349. Even accepting as true the allegation that Anthem had *no information* regarding services rendered, the Virginia Supreme Court has found reliance, “even if factually true,” to be “unjustified as a matter of law” where a party has reason “to be skeptical ... of the alleged misrepresentation.” *Sweely Holdings*,

Nor can Anthem claim reliance for being “forced to expend resources and incur expenses” from the IDR process, *see* Compl. ¶ 325—Virginia courts have rejected this very theory. *See, e.g., Qiu*, 885 S.E.2d at 513 (holding that plaintiff “defend[ing] himself by spending significant sums to *dispute* the [false] representations ... is precisely the opposite of *relying* on them” (emphasis in original)); *Commonwealth Transp. Comm’r v. Saunders*, 2000 WL 558913, at \*2 (Va. Cir. Ct. May 3, 2000) (rejecting actual and constructive fraud claims because the misrepresentations were “made to a third party” and “[plaintiff’s] harm comes from the third party’s reliance on the representation”). Without justifiable reliance or belief in the falsity of the alleged submissions, Anthem’s claims for fraudulent misrepresentation and constructive fraud must be dismissed.

#### **4. Conversion Claim (Count VIII)**

Anthem’s conversion claim likewise fails. “The elements of conversion are (1) the wrongful assumption or exercise of the right of ownership over goods or chattels, (2) that belong to another, (3) inconsistent with, or in denial of the owner’s rights.” *Mich. Mut. Ins. Co. v. Smoot*, 129 F. Supp. 2d 912, 918 (E.D. Va. 2000). To start, Anthem does not allege that it paid AGS itself. Nor could it—as any alleged IDR payments would have been made to providers, not AGS. Setting aside this fatal defect, Anthem’s conversion claim fails a second time over because, under Virginia law, “[t]he exercise by the alleged converter of a legal right, such as the *right of execution on a judgment*[,] ... cannot form the basis for an action for conversion.” *Grayson v. Westwood Bldgs.*

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*LLC v. SunTrust Bank*, 820 S.E.2d 596, 605–06 (Va. 2018). Here, Anthem alleges it was involved in thousands of IDR disputes against Defendants, and claims that it “frequently communicates that services are ineligible.” *See* Compl. ¶ 64–68, 116–19, 130, 161–277. Even under Anthem’s version of events, then, Anthem claims to have “frequently” known that disputes were ineligible notwithstanding any alleged contrary representations. Under these circumstances as Anthem alleges them (taken as true solely for purposes of this motion to dismiss), any claimed reliance by Anthem during the IDR process and negotiation periods must be “unjustified as a matter of law.” *Sweely*, 820 S.E.2d at 606.

*L.P.*, 859 S.E.2d 651, 679 n.35 (Va. 2021) (emphasis added). For this reason, “courts have regarded a defendant’s compliance with a valid court order as lawful justification.” *Bitseller Expert Ltd. v. Verisign, Inc.*, 2019 WL 13251185, at \*6 (E.D. Va. Dec. 20, 2019); *see also id.* (finding it “widely recognized” that “conversion will not result” when a taking is authorized or directed by a court order). That “lawful justification” eliminates the ability of Anthem to prove that AGS had “wrongful dominion” over Anthem’s money or property. *Id.* Anthem’s conversion claim thus fails twice over.

#### **5. Civil Conspiracy Claim (Count VII)**

Finally, Anthem’s civil conspiracy claim similarly fails for at least three reasons. First, Virginia law recognizes that “[t]here can be no conspiracy to do an act which the law allows.” *Qiu*, 885 S.E.2d at 514 (citing *Hechler Chevrolet, Inc. v. Gen. Motors Corp.*, 337 S.E.2d 744, 748 (Va. 1985)). Federal law allows participation in the IDR process—even where eligibility disputes exist. Indeed, the IDR process itself has built-in mechanisms at *multiple* different stages to allow parties to dispute eligibility, expressly accounting for the very dispute Anthem complains of. *See supra* Background Section A. Second, Anthem fails to allege any “preconceived plan” between AGS and the Providers. *Bay Tobacco, LLC v. Bell Quality Tobacco Prods., LLC*, 261 F. Supp. 2d 483, 499 (E.D. Va. 2003). Indeed, Anthem does not plausibly: (1) allege a single communication in which AGS and the Providers agreed to commit a tort; (2) specify who supposedly reached that agreement; or (3) describe when or how that agreement was reached. Third, a “claim of civil conspiracy generally requires proof that [an] underlying tort was committed.” *Id.* (citing *Almy v. Grisham*, 639 S.E.2d 182, 188 (Va. 2007)). Because Anthem fails to allege a viable cause of action for any of the above referenced torts, it also “fail[s] to state a claim for civil conspiracy to commit those torts.” *Id.*

Accordingly, beyond the general defects applicable to all claims, Anthem’s state law claims each independently fail for these claim-specific deficiencies.

**I. Virginia’s Anti-SLAPP Statute Entitles AGS to Its Reasonable Attorneys’ Fees.**

Finally, in addition to dismissal, AGS respectfully submits that it is entitled to its attorneys’ fees pursuant to Virginia’s Anti-SLAPP statute. Va. Code § 8.01-223.2. Federal courts routinely award fees under state Anti-SLAPP statutes. *See, e.g., Minnix v. Sinclair Television Grp.*, 2023 WL 3570955, at \*7–8 (W.D. Va. May 19, 2023); *Fairfax v. N.Y. Pub. Radio*, 2023 WL 3303125, at \*8 (E.D. Va. Apr. 4, 2023), *aff’d*, 2024 WL 3935041 (4th Cir. Aug. 26, 2024); *Bobulinski v. Tarlov*, 758 F. Supp. 3d 166, 184–89 (S.D.N.Y. 2024).

Virginia’s Anti-SLAPP statute applies to Anthem’s claims because it bases its claims on statements “regarding matters of public concern that would be protected under the First Amendment ... that are communicated to a third party.” § 8.01-223.2(A)(i). Specifically, Anthem claims are wholly based on alleged attestations made during the IDR process regarding the applicability of federal and state statutes to certain medical procedures. *See generally* Compl. ¶ 3, 4. Because these statements were made as part of petitioning activity, they are protected by the First Amendment. *Supra* Part D. Moreover, these alleged statements involved a matter of public concern because they “involve[d] an issue of social, political, or other interest to a community” and “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). Indeed, Anthem spends many pages of its complaint painting this as a matter of public concern. *See* Compl. ¶¶ 31–36, 78–108. Finally, the alleged statements were made to a third-party—the IDRE. Accordingly, in addition to AGS requesting that this “suit against [it] [be] dismissed,” AGS respectfully requests that this Court “award[] reasonable attorney fees and costs.” Va. Code § 8.01-223.2(C).

## CONCLUSION

In the end, Anthem’s complaints regarding the NSA IDR process are properly directed to Congress, who “designed the IDR process to create an efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs.” *Reach Air*, 160 F.4th at 1119 (citation modified). They do not belong in this Court. For all the foregoing reasons, this Court should dismiss all claims with prejudice and award fees and costs.

Dated: January 27, 2026

JONES DAY

By: /s/ William G. Laxton Jr.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 27, 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/ William G. Laxton Jr.  
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