UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

ANTHEM HEALTH PLANS OF VIRGINIA, INC., et al., **Plaintiffs,** **v.** **AGS HEALTH, INC., et al.,** **Defendants.**	**Case No. 7:25-CV-00804-RSB-JCH**

MOTION TO DISMISS

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 (collectively the "Moving Defendants"), by counsel, move this Court for an order pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing Plaintiffs' Complaint [D.E. 1] with prejudice. In support of this motion, the Moving Defendants rely on their brief contemporaneously filed herewith in accordance with Local Civil Rule 11(c) as well as the Declaration of

WHEREFORE, Moving Defendants respectfully request that the Court dismiss Plaintiffs' Complaint with prejudice and grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 27th day of January, 2026.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
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

DECLARATION OF ANTHONY PAPE

I, Anthony Pape, hereby declare, subject to the pains and penalties of perjury, as follows:

1. I am the Vice President, Managed Care, for an affiliate of the Defendants. I make this Declaration out of personal knowledge unless indicated otherwise.

2. During the period at issue in this action, Ingleside Emergency Group, LLC, Kingsford Emergency Group, LLC, Lake Spring Emergency Group, LLC, Western Virginia Regional Emergency Physicians, LLC, and Wildwood Emergency Group, LLC (the "Provider Groups") provided emergency room medical services in Virginia. The Provider Groups and their affiliates do not seek federal NSA Arbitrations as the regular way of doing business, but they have exercised such rights when it appeared appropriate. At relevant times, the Provider Groups have

been in-network providers with two of the state's largest health insurance carriers, Aetna and Cigna. For patients covered by Aetna or Cigna, the reimbursement payments to the Provider Groups have not led to any arbitrations under the federal No Surprises Act. During the relevant period in Virginia, at least 30% of the time that Anthem Health Plans of Virginia, Inc. or Healthkeepers, Inc. (collectively, "Anthem") has been the responsible carrier, the Provider Groups have not sought arbitration against Anthem. A portion of arbitrations against Anthem have proceeded under state law rather than through federal NSA arbitrations.

3. I have reviewed the Complaint in this matter and am aware that Anthem and certain of their fellow members of the Blue Cross Blue Shield Association have filed this action and similar actions against various medical provider groups in several states, claiming that a frequent exercise of rights under the federal No Surprises Act constitutes criminal racketeering activity.

4. In Paragraph 72 of the Complaint, Anthem recognizes that the federal NSA provides for baseball-style arbitrations. As a result, the bid of the party closest to the appropriate number determined by the arbitrator prevails as the award. This procedure encourages parties to bid more reasonably or with a greater compromise than the number for which they might advocate in other settings. Nevertheless, Anthem proposed zero-dollar bids on more than 100 relevant occasions. I am not aware of any reason Anthem could blame any of the Provider Groups or their affiliates for Anthem's choice to bid zero dollars in a baseball-style arbitration.

5. In addition to making aggressively low bids, in Paragraph 82 of the Complaint, Anthem recognizes that the federal NSA procedures and state law counterpart contemplate a negotiation period at the start of the arbitration process. Nevertheless, Anthem frequently ignored the negotiation stage, refusing to participate or respond, let alone raise objections such as on eligibility grounds. As a result, Paragraph 123 recognizes "default outcomes," yet Anthem tries to

blame its defaults on others. I have checked with pertinent co-workers, and I understand that Anthem has not sought extensions of time in these matters even though CMS has made extensions available for parties in federal NSA arbitration processes.

6. Anthem has not just ignored arbitrations, they have ignored awards. Anthem rarely, if ever, pays awards within the 30-day deadline and, as of January 16, 2026, at least 30% of the awards against Anthem to date remained overdue, contrary to law.

7. Paragraph 335 of the Complaint appears to include language from one of the other similar complaints against other parties not applicable to emergency medicine at issue here. Anthem alleges that "in some cases (such as when the patient waived balance billing protections), Defendants are the only entities in possession of information critical to Anthem's ability to assess a claim for IDR eligibility, such as information pertaining to the provider, types of services rendered, and patient records." That allegation must have been intended for activities outside of emergency services because the No Surprises Act does not authorize waivers by patients of balance billing protections, and I am unaware of that ever happening with respect to any emergency room patient seen by the one of the Provider Groups.

8. Despite this vague and apparently inapplicable allegation by Anthem, I am not aware of Anthem's lack of information or access to information from which to determine eligibility of matters in the NSA arbitrations at issue. Anthem is the party in possession of eligibility information about subscribers and other insureds.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on January 26, 2026

Anthony Pape

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

BRIEF IN SUPPORT OF
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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 brief in 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 Complaint filed by Anthem Health Plans of Virginia Inc. d/b/a Anthem Blue Cross and Blue Shield and Healthkeepers, Inc. (together, "Anthem") attempts to chill providers from exercising their statutory rights and relitigate arbitration awards that Anthem lost by, incredibly, elevating factual disputes and dissatisfaction with the arbitration procedures to the Pantheon of criminal racketeering activity. In so doing, Anthem has not established this Court's subject matter jurisdiction over any of its claims because of a statutory bar to what they are attempting. The Complaint additionally fails to state a claim on which relief can be granted because Anthem's allegations do not satisfy the pleading standards of Fed. R. Civ. P. 8 and 9(b). More specifically, Anthem's claims should be dismissed on the following grounds:

First, the No Surprises Act ("NSA") bars Anthem's claims, as a jurisdictional matter, as impermissible attacks on binding arbitral awards issued in the Provider Entities' favor. Under the NSA, judicial review of the merits of an arbitration award under the guise of post-award collateral attacks is not permitted, and Anthem has not sufficiently pled any of the narrow, cognizable grounds for vacatur under the Federal Arbitration Act ("FAA").

Second, Anthem has not alleged the requisite continuity for a pattern of racketeering activity to support a substantive claim under the Racketeer Influenced and Corrupt Organizations

Act ("RICO") and, by extension, the derivative RICO conspiracy claim. Anthem's RICO claims also fail because the Provider Entities' privileged conduct in arbitration cannot serve as predicate acts for RICO and because Anthem has not sufficiently alleged proximate cause under RICO.

Third, Anthem's claims are similarly barred by both the *Noerr-Pennington* doctrine and Virginia's anti-SLAPP statute, which immunize parties from liability for core petitioning activity, including the initiation of the independent dispute resolution processes at issue here, which is protected by the First Amendment.

Fourth, Anthem's claims, which sound in fraud, are not pled with particularity.

Fifth, Anthem's claims are precluded under the doctrines of *res judicata* and collateral estoppel, as they seek to relitigate eligibility issues and payment amounts that were already decided in binding arbitration.

Sixth, Anthem has not alleged with particularity the claims for which it is a fiduciary under the Employee Retirement Income Security Act ("ERISA")—a requirement to bringing an ERISA claim here, particularly when sounding in fraud.

Seventh, Anthem's state law claims for statutory business conspiracy, civil conspiracy, unfair and deceptive trade practices, common law fraud, constructive fraud, and conversion independently fail because each lacks adequate allegations to establish the requisite elements.

At its core, this case is an attempt by Anthem to chill healthcare providers from exercising statutory rights and seeking fair compensation, at the risk of Anthem branding them with the stigma of RICO. While complaining about the volume of filings and adversarial zeal of providers, Anthem's volume of unpaid arbitration awards and adversarial zeal are far more dramatic. *See* Declaration of Anthony Pape, submitted herewith, ¶ 6. Anthem attempts to justify, in a circular way, low reimbursement rates based on its historic practice of low reimbursement rates (without

regard to higher rates paid by other insurers). Anthem alleges its dissatisfaction, not just with the Provider Entities, but also with its high loss rate against all providers. As a general matter, providers have succeeded in at least 85% of federal NSA arbitrations against Anthem. (Compl. ¶ 105.) Ignoring its low reimbursement rates, Anthem attributes its high loss rate to volume, time constraints, and fact findings in federal NSA arbitrations. Anthem similarly complains about substantively "favorable or default outcomes" for the Provider Entities "when health plans have insufficient time to challenge eligibility." (*Id.* ¶ 123.) Disappointed with their baseball-style arbitration strategies and failed lobbying efforts at changing processes, Anthem attempts to equate to criminal racketeering and intentional torts the mere volume and adversarial zeal in arbitrations they have lost before neutral arbitrators. There is no cognizable cause of action based on such volume and zeal, and there should not be, lest it have an intolerable chilling effect on and stigma attached to laudable litigation activities. Accordingly, the Complaint should be dismissed with prejudice.

FACTUAL ALLEGATIONS

Unless indicated otherwise, the following facts are drawn from the Complaint and taken as true only for purposes of the motion to dismiss:

The Parties

Ingleside Emergency Group, Kingsford Emergency Group, LLC, Lake Spring Emergency Group, LLC, Western Virginia Regional Emergency Physicians, LLC and Wildwood Emergency Group, LLC provide emergency medical services in Virginia. (*Id*. ¶¶ 16-20.) The Schumacher Group of Louisiana, Inc. and The Schumacher Group of Virginia, Inc. are holding companies whose affiliates provide staffing and management services that benefit provider groups, hospitals, and other facilities. (*Id*. ¶¶ 14-15.) Collectively, the Provider Entities and affiliates serve, among others, emergency room patients throughout the country. (*Id*. ¶ 7.)

AGS Inc. is a health care revenue cycle management company used by the Provider Entities (and other healthcare organizations) to handle the administrative and financial processes for tracking patient care episodes from registration to final payment. (*Id*. ¶ 21.)

Anthem is part of the Blue Cross Blue Shield Association ("BCBS Association"), one of the largest for-profit health insurers in the world. According to Corporate Disclosure Statements of Anthem Health Plans of Virginia, Inc. and Healthkeepers, Inc., they share the same ultimate parent company (Doc. 2, 2-1) and, as alleged, they share the same principal place of business. (Compl. ¶¶ 12, 13.) They have not alleged that they maintain any significant independent staff or management from each other. The members of the BCBS Association, including Anthem, have been defendants in antitrust class actions managed out of Alabama in which they have been held accountable for using their monopoly power throughout the United States. *See*, *e.g.*, *In re: Blue Cross Blue Shield Antitrust Litigation* (MDL No. 2406) (approving antitrust settlement requiring Anthem and other BCBS Association members to pay $2.8 billion to providers, in addition to injunctive relief valued at billions of dollars more). Anthem is not a helpless wallflower.

IDR Process Under the NSA

Congress passed the NSA to prevent patients from receiving surprise medical bills when their insurance did not cover certain emergency-medical charges. (Compl. ¶1.) The NSA protects patients by capping the amount an insured patient must pay for certain services and by shifting the onus to the provider and the insurer to negotiate or dispute the appropriate out-of-network rate. 42 U.S.C. § 300gg-111(a)(1)(C)(iv)(II); *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 654 F. Supp. 3d 575, 580 (E.D. Tex. 2023).

To resolve the inevitable payment disputes arising between insurers and providers, the NSA established an expressly *binding* arbitration system called Independent Dispute Resolution ("IDR"), implemented primarily through the Centers for Medicare & Medicaid Services ("CMS"),

a federal agency within the Department of Health and Human Services ("HHS"). (Compl. ¶¶ 2, 46.) If the provider and insurer cannot reach an agreement during a required 30-day negotiation period, either party may submit the dispute to the Secretary of HHS through an online portal, thus initiating the IDR process. 42 U.S.C. § 300gg-111(c)(1)(A)-(B). Independent Dispute Resolution Entities ("IDREs") certified by the Secretary of HHS as having the requisite expertise serve as the "referees" for arbitrating such disputes. *Id.*

As an initial matter, IDREs must determine whether the dispute qualifies for the federal IDR process. 45 C.F.R. § 149.510(c)(1)(v). The eligibility determination does not involve some "cursory review . . . based on incomplete, one-sided information," or a rubber stamp of the initiating party's eligibility attestation, as Anthem alleges. *See* Compl. ¶ 70. Rather, rules call for *the non-initiating party* to object to federal IDR eligibility via the federal IDR Portal within one business day after the end of the three-business-day period for certified IDRE selection; and the IDRE is required to review the objection and any information submitted in support as part of its eligibility determination—critical steps glossed over in Anthem's Complaint. 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) (https://www.cms.gov/files/document/rev-102822-idr-guidance-disputing-parties.pdf). As set forth in the Guidance:

> If the non-initiating party believes that the Federal IDR Process is not applicable, **the non-initiating party must notify the Departments by submitting the relevant information through the Federal IDR portal** as part of the certified IDR entity selection process. This information must be provided not later than 1 business day after the end of the 3 business-day period for certified IDR entity selection…This notification must include information regarding the Federal IDR Process' inapplicability. 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.

Id. (emphases added). Despite this clear guidance, Anthem concedes it failed to submit objections to the IDREs in thousands of arbitrations, and even when it did, the objections were untimely. *See, e.g.,* Compl. ¶¶ 197-198, 220-221, 226-227, 288. The Complaint also fails to allege that Anthem submitted eligibility objections *to the IDREs through the IDR Portal*, as mandated by regulation. *See* 45 C.F.R. § 149.510(c)(1)(iii). Instead, it blames its repeated failures on the process being "susceptible" to abuse through a large volume of NSA arbitrations. Compl. ¶¶ 108-110, 115.[1]

One reason a dispute might not qualify for federal IDR process is when a state law exists to protect the patient from surprise billing for the service at issue. Compl. ¶ 44. Relevant here is Virginia's Balanced Billing Law (the "VBBL"), which shares the NSA's goal of protecting consumers from unexpected medical bills. *Id*. ¶ 45. This law, while complementary to the NSA, is not coterminous with it. For example, the VBBL does not cover the same universe of services or apply to the same universe of insurance plans (e.g. certain self-funded health plans) as the NSA.[2] Self-funded plans in Virginia can present additional questions of federal IDR eligibility depending on whether a patient's employer or the particular plan opted into the state's surprise billing law. *See* Compl. ¶¶ 27, 79. As such, Anthem cannot plausibly allege that the Provider Entities possessed all necessary information to know which claims were ineligible.

After IDREs have decided the threshold eligibility question, each party submits to the

[1] Anthem chose not to seek extensions of time to file its eligibility objections, despite CMS affording extensions to parties in federal NSA arbitration processes. *See* Pape Decl. ¶ 5.

[2] *See* https://www.scc.virginia.gov/consumers/insurance/health-insurance-consumer/balance-billing-protection.

IDRE a proposed payment amount from the insurance company for the service(s) in dispute, justifying their offered amount with reference to various statutorily prescribed factors. These factors include, for example, the Qualifying Payment Amount ("QPA"), which, according to Anthem's Complaint, "generally represents the median contract rate for the service." Compl. ¶ 5. Other factors include, but are not limited to, the provider's training, experience, quality, and market share, and the severity of the patient's condition. *See* 42 U.S.C. § 300gg-111(c)(5)(C)(i)-(ii). "Defendants possess[] superior knowledge of the facts underlying the services they . . . provided" because they are in possession of "information pertaining to the provider, types of services rendered, and patient records," Compl. ¶¶ 335, 343, while Anthem is naturally in possession of plan, contract, and policy information, *id.* ¶¶ 25-29.[3] When submitting offers, the non-initiating party has yet another opportunity to challenge eligibility for IDR and to submit documentation in support, something Anthem appears to have done for a subset of the examples referenced in the Complaint. *Id.* ¶¶ 198, 204, 210, 216. The IDRE functions as a "baseball-style" arbitrator, selecting the most reasonable offer of the two, and its decision is binding. *Id.* ¶¶ 72, 74.

To prevent the federal judiciary from being overwhelmed by dissatisfied parties' attempts to *relitigate* these payment disputes, the NSA explicitly bars judicial review seeking to attack IDRE determinations, with only four limited exceptions. *See* 42 U.S.C.§300gg-111(c)(5)(E)(i). The NSA states, in relevant part, "[an IDRE] determination . . . shall be binding upon the parties involved in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [IDRE]; and *shall not be subject to judicial review*, except" in four scenarios incorporated

[3] Anthem suggests vaguely that "when the patient waive[s] balance billing protections" "Defendants are the only entities in possession of information critical to Anthem's ability to assess a claim for IDR eligibility." Compl. ¶ 335. This allegation, appearing only near the end of the Complaint, is not specific as to any particular billing dispute and, in any event, is contradicted by the NSA, which does not allow emergency room patients to waive their balanced billing rights. *See* Pape Decl. ¶ 7.

from the Federal Arbitration Act ("FAA"). *Id.* (emphasis added); *see* 9 U.S.C. § 10(a)(1)-(4); *Guardian Flight et al. v. HCSC* ("*Guardian Flight I*"), 140 F.4th 271, 274-75 (5th Cir. 2025); *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.* ("*Guardian Flight II"*), 140 F.4th 613, 620 (5th Cir. 2025) ("[If a party] wish[es] to seek vacatur of [IDRE] awards, they must do so through the FAA paragraphs explicitly incorporated for that purpose.").[4]

The market's response to the implementation of the IDR process under the NSA has vastly exceeded initial predictions. Some federal agencies had predicted that the IDR process would resolve approximately 22,000 disputes annually. Compl. ¶ 89. Since then, approximately 850,000 disputes were filed in the second half of 2024 alone. *Id.* ¶ 90. Not surprisingly, with insurers controlling the initial starting point of payment, providers initiate nearly all IDR processes. *Id.* Providers likewise win an overwhelming percentage of IDRE decisions. For example, in 2024, providers won 85 percent of disputes. *Id*. ¶ 105.

In response to this unanticipated volume of IDR process initiations, in 2023, HHS and other federal agencies published comprehensive proposed rulemaking to improve the functioning of the IDR process. *See Federal Independent Dispute Resolution Operations Notice of Proposed Rulemaking*, 88 Fed. Reg. 75744 (Nov. 3, 2023). One of the aims of the rulemaking is to reduce the number of ineligible disputes, by eliminating informational asymmetry about plans, contracts, and policies that favors healthcare insurers over healthcare providers. Under the proposed rule, non-initiating parties would be *required* "to provide a response to the notice of IDR initiation (including . . . any objection to Federal IDR process eligibility) in order to increase transparency

[4]Although IDR awards are binding, there exists an eligibility reconsideration process—omitted from Anthem's Complaint. As part of this process, a party may seek to re-open closed IDR proceedings for "jurisdictional error[s]," such as when an IDRE "incorrectly determines" eligibility. CMS, Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties, Errors Identified After Dispute Closure (June 2025) (https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf).

and improve efficiencies in the Federal IDR process." *Id*. at 75772. While the rulemaking process is ongoing, the context of it is telling—incorrect eligibility determinations have been deemed to arise from inaction by insurers in possession of the pertinent information, not an intentional "criminal enterprise" of underpaid providers. *See* No Surprises Act (NSA) Independent Dispute Resolution (IDR) Process Data Analysis for 2024 (Nov. 26, 2025) (https://www.congress.gov/crs-product/R48738) ("The Departments' 2024 data also indicate signs of disengagement from the IDR process by insurers. The data indicate a higher proportion of default determinations in favor of providers and facilities relative to 2023; in these determinations, providers and facilities prevailed by default because they were the only party to have paid fees and submitted an offer.").

Anthem's Retaliatory and Intimidatory Response to the Provider Entities' Success in IDR

In addition to simply refusing to pay and greatly delaying payment, Anthem and its affiliates have responded to their dissatisfaction with the IDR process by making nearly identical allegations against many health-care providers around the country. According to judicially noticeable court records, Anthem and its affiliates have filed several RICO-themed lawsuits around the country against various healthcare providers for using a statutorily-prescribed process for resolving disputes with insurers that elect to underpay for services. *E.g.*, *Anthem Blue Cross Life and Health Insurance Company et al. v. Prime Healthcare Services – St. Francis, LLC et al.*, Case No. 8:26-cv-00023 (C.D. Cal.); *Blue Cross Blue Shield of Texas v. HaloMD LLC,* Case No. 5:25-cv-00132 (E.D. Tex.).

So too here, Anthem seeks to punish the Provider Entities for successfully availing themselves of the Congressionally-mandated IDR process. The crux of the Complaint is that the Provider Entities have brought too many arbitrations and prevailed at such a high rate that this Court should consider volume and adversarial zeal, in response to underpayments, a scheme to

defraud. And not just garden-variety fraud, but a criminal enterprise, supposedly with sufficient continuity to constitute racketeering activity, according to Anthem's Complaint.

As alleged, the first part of the Provider Entities' scheme involves making false statements about federal IDR process eligibility. According to Anthem, the Provider Entities make these statements *not* to redress underpayments by Anthem, but to forum shop, dragging Anthem into a federal, rather than state, IDR process, "susceptible to exploitation and abuse" because of volume and process permeating IDREs. Compl. ¶¶ 104, 105, 108, 128, 133, 134. The Complaint brushes in broad strokes various hypothetical misrepresentations by unspecified "initiating parties." For example, the Complaint vaguely suggests that "the initiating party must upload a fictitious document to support a fabricated open negotiation start date" and that "at every stage of the online process, the initiating party must make false statements to submit a dispute for services that are not eligible." *See, e.g., id*. ¶¶ 56, 61. The Complaint also repeatedly refers to the Provider Entities' "false statements, representations, attestations," as if using three terms somehow makes the allegations more specific. *See, e.g., id*. ¶¶ 10, 63, 322, 327, 331, 333, 342, 344.

But, at bottom, Anthem's allegations depend on the Provider Entities stating, "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." *Id*. ¶ 59 (emphasis added). The lynchpin of Anthem's claims is nothing more than a single statement, at the outset of IDR, that a particular provider *believes* a dispute is eligible for federal IDR. Yet the Complaint is devoid of a plausible *factual* allegation that the Provider Entities knew any particular claim was ineligible, let alone knew better than Anthem, which possessed the information and had opportunities to object. The best Anthem can offer in support of the Provider Entities' *knowledge* of falsity is a vague allegation that "[p]roviders require proof of insurance at the point of service to submit claims to the health

plan, and the member's health insurance card identifies the nature of the member's coverage." *See id*. ¶ 30. Anthem has not denied that eligibility for federal IDR processes can be a complex inquiry, nevertheless it tries to blame providers for something sordid. Ultimately, its allegations are that volume can "interfere with Anthem's ability to effectively identify ineligible disputes," without explaining specifically when or why it has failed to keep up.[5] *Id.* ¶ 127. This Court is left to guess which of the attestations were false and specifically why, something Anthem does not precisely specify, despite having the clear informational advantage here.

Instead, Anthem vaguely *approximates* that the Provider Entities' false attestations number in the "thousands" and involve three categories of ineligible claims: "(1) services and disputes already governed by the VBBL, (2) disputes for which the Provider Entities failed to initiate or pursue open negotiations, and (3) disputes already resolved or barred by timing rules."[6] *Id*. ¶¶ 10, 111. Notwithstanding this alleged volume of ineligible disputes, Anthem does not provide a *single* example of the latter two categories. Instead, it focuses on the VBBL. Indeed, Anthem's Complaint reads like an advertisement for the VBBL, devoting nine pages to its perceived advantages over the NSA and Anthem's somewhat lower loss rate in the state forum, albeit still a significant loss rate. *See id.* ¶¶ 78-108. Anthem then cherry picks a dozen or so examples out of thousands and declares the select few "ineligible state law" claims. *See id.* ¶¶ 161-277. These examples, in fact, have a defect in common — for *every* one of them, Anthem had the information necessary to

[5] In reality, Anthem often does not even pay NSA arbitration awards and fights that courts cannot enforce them. There is no shortage of Anthem's volume of underpayments and no shortage of zeal in its efforts to avoid making reasonable payments that are required by law. *See* Pape Decl., ¶ 6. If Anthem were permitted to turn a subjective view of excessive zeal within an adversarial process into RICO and intentional tort claims, the flipside facts would support mirror-image RICO counterclaims against Anthem for its volume of underpayments that overwhelm providers and its excessive zeal in illegally withholding payments.

[6] Paragraph 383 of the Complaint makes a one-off reference to an additional category of allegedly ineligible claims, those that "Anthem denied and thus are exempt from the IDR process." SCP does not know what Anthem is referring to, and, without more, is unable to respond to this allegation. *See* Compl. ¶ 383.

object, but did not *timely* dispute eligibility within the statutorily prescribed window. *See, e.g., id.* ¶¶ 197-198 (waiting a year to dispute eligibility); ¶¶ 220-221 (waiting 11 months to dispute eligibility); ¶¶ 226-227 (waiting 21 months to dispute eligibility). Further, Anthem does not plausibly make specific, non-conclusory allegations from which to infer the Provider Entities' knowledge of the ineligibility of those claims, to the extent they were actually ineligible.

Next, Anthem accuses the Provider Entities of simultaneously initiating large numbers of IDR disputes with the help of AGS's artificial intelligence ("AI") tool, calling it an "abuse of volume," without citing specific numbers. *See id.* ¶¶ 123, 158. The Complaint does not, because it cannot, identify any statutory or even moral cap on initiations or any prohibition on using AI in the initiation process (there is neither). According to Anthem, but without plausible factual allegations to back it up, the Provider Entities' motive is not to recover reasonable compensation, but to "overwhelm" Anthem into missing deadlines to object. *Id.* ¶ 335. But Anthem's theory is inconsistent with a neutral arbitrator finding in the Provider Entities' favor, something that happened an overwhelming majority of the time.

In a clear attack on the payment determinations themselves, Anthem blames the Provider Entities for "inflating their reimbursement demand to levels far beyond what the market would support." *Id.* ¶¶ 113, 131, 132.[7] According to Anthem, these "inflated and commercially unreasonable requests" generate IDRE awards skewed "heavily in excess of the QPA." (*Id.*) Of course, this conclusory logic ignores what baseball arbitrations are, the IDREs' ability to select Anthem's offer over any "commercially unreasonable" one, and the many good reasons a

[7] Near the end of the Complaint, Anthem mentions, without support and for the first time, fourth and fifth elements of the Provider Entities' alleged scheme: "knowingly misrepresent[ing] the QPA for the service," *id.* ¶ 305, and failing to comply with batching rules and the cooling off period, *id.* ¶ 383. Again, because these supposed bad acts are not mentioned elsewhere in the Complaint, are completely unexplained, and may just be holdovers from a RICO complaint against a different provider, defendants are unable to address them. They certainly do not constitute any "plausibly" pleaded basis for relief with sufficient particularity.

successful offer can exceed the QPA (*e.g.* the qualifications of the provider, the acuity of the patient, or the need to recoup fees and expenses related to IDR).[8]

Just as telling is what Anthem does not allege. While complaining about volume and adversarial zeal, Anthem does not allege that the Provider Entities brought "sham" arbitrations. Anthem claims that the legally required compensation may incentivize arbitrators not to dismiss arbitrations, but Anthem does not allege bribery. Anthem does not allege forgeries, document alteration, or witness intimidation. At most, Anthem alleges volume and adversarial zeal.

Anthem asks this Court to unwind thousands of unspecified, binding arbitration awards decided in the Provider Entities' favor by an independent third party and, alarmingly, to find the Provider Entities liable for damages caused by their win rate. Compl., Prayer for Relief. The Court should see Anthem's lawsuit for what it is—a case of sour grapes over payment disputes decided in the Provider Entities' favor and, more generally, the NSA's failure to yield outcomes that Anthem wants. Anthem's grievances belong in lobbying efforts to the legislature or boardroom discussions about raising reimbursement rates to levels paid by others, not in a RICO complaint against healthcare providers seeking reasonable payments for emergency medical services.

ARGUMENT

I. LEGAL STANDARD

The Provider Entities move to dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Under Rule 12(b)(1), a court must dismiss a case where it lacks subject matter jurisdiction. "When a Rule 12(b)(1) motion challenge is raised to the factual basis for subject matter jurisdiction, the burden of proving subject matter jurisdiction is on

[8] Although not necessary to resolve this motion, in levying its accusations about its losses in baseball arbitrations, Anthem also fails to acknowledge many instances where Anthem submitted indefensible zero dollar ($0) offers of payment for medical services rendered. *See* Pape Decl. ¶ 4.

the plaintiff." *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). Unless "the jurisdictional facts are intertwined with the facts central to the merits of the dispute," the district court may then go beyond the allegations of the complaint and resolve the jurisdictional facts in dispute by considering evidence outside the pleadings, such as affidavits. *U.S. ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 348 (4th Cir. 2009).

Under Rule 12(b)(6), a court must dismiss a complaint that "fails to state a claim on which relief may be granted." To survive a motion to dismiss, a complaint must state a "plausible claim for relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible only when it contains sufficient factual allegations for a court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Conceivable is not enough. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Although courts view the complaint in the light most favorable to the plaintiff, legal conclusions and recitations of claim elements are not enough. *Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Claims sounding in fraud have a higher pleading standard. *See Harrison v. Westinghouse Savannah River Co.,* 176 F.3d 776, 784 (4th Cir. 1999). To adequately allege fraud under Rule 9(b), a party must state with particularity the circumstances constituting fraud—specifically the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby. *Id.*; *see Xcoal Energy & Res., L.P. v. Smith*, 2008 WL 312912, at *1 (W.D. Va. Feb. 4, 2008) ("The requirements of Rule 9(b) have been analogized to the goal of a good newspaper lead-who, what, when, where, and how."); *Iron Workers Local 16 Pension Fund v. Hilb Rogal & Hobbs Co.,* 432 F. Supp. 2d 571, 578 (E.D. Va.

2006) ("A complaint must plead with particularity the time, place, speaker, and contents of the allegedly false statements."). Further, such facts must be alleged with respect to each defendant's participation in the fraud. *Iron Workers,* 432 F. Supp. 2d at 594.

Under Rule 12(b)(6), the Court may consider the allegations in a complaint as well as "official public records, documents central to plaintiff's claim, and documents sufficiently referred to in the complaint so long as the authenticity of these documents is not disputed." *Baker v. McCall*, 842 F. Supp. 2d 938, 943 (W.D. Va. 2012) (citing *Witthohn v. Fed. Ins. Co.,* 164 Fed. Appx. 395, 396 (4th Cir.2006) ("A district court may clearly take judicial notice of public records")); *Gasner v. Cnty. of Dinwiddie*, 162 F.R.D. 280, 282 (E.D. Va. 1995) (allowing consideration of "official public records," "documents central to plaintiffs' claim," and "documents sufficiently referred to in the complaint," provided the document is of "unquestioned authenticity"). To the extent this motion references public records or business documents outside the Complaint, those documents fall into one of the above categories and are properly considered by this Court.

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION BECAUSE ANTHEM'S CLAIMS ARE BARRED UNDER THE NSA.

The NSA is clear—outside of four limited exceptions (that do not apply here), there is no right to challenge binding IDR payment decisions. *Guardian Flight I*, 140 F.4th at 277. The NSA's bar on judicial review applies to challenges labeled as different causes of action (such as RICO) or characterized as disputes over eligibility determinations (a condition precedent to every IDRE payment decision indisputably subject to the NSA's bar). *See Guardian Flight LLC et al. v. Aetna Life Ins. Co. et al.,* 789 F. Supp. 3d 214, 227 (D. Conn. 2025) ("Barring the limited exceptions in § 10(a) of the FAA, IDR awards are final. Courts cannot vacate or entertain collateral attacks on these awards. . . ."). Hence, claims such as Anthem's that require a court to assess the validity of

the arbitration process or the award itself are impermissible judicial challenges requiring dismissal under the NSA.

Collateral attacks on arbitration awards are considered reviews of them. "[W]here a party files a complaint in federal court seeking damages for an alleged wrongdoing that compromised an arbitration award and caused the party injury, it 'is no more, in substance, than an impermissible collateral attack on the award itself.'" *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 205 F.3d 906, 910 (6th Cir. 2000) (quoting *Corey v. N.Y. Stock Exchange*, 691 F.2d 1205, 1211-12 (6th Cir. 1982)); *see Fakhri v. Marriot Int'l Hotels, Inc.*, 201 F. Supp. 3d 696, 711-712 (D. Md. 2016) (*citing Decker*, 205 F.3d at 908); *see also Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp*., 512 F.3d 742, 747-50 (5th Cir. 2008) (dismissing civil RICO and state fraud claims premised on alleged fraud in an arbitration as impermissible collateral attacks); *Ctr. for Excellence in Higher Educ., Inc. v. Accreditation All. of Career Sch. & Colleges*, No. 1:22-CV-1223 (RDA/WEF), 2025 WL 725265, at *7 (E.D. Va. Mar. 6, 2025) (holding that plaintiffs' due process violation, tortious interference with contract, and tortious interference with prospective business or economic advantage claims constituted impermissible collateral attacks on the arbitral award).

Anthem offers nothing that could overcome this bar or trigger a cognizable ground for vacatur under the FAA. In conclusory ways, Anthem cries foul in the arbitral process. Anthem vaguely claims the challenged awards were invalid by using labels such as fraud or undue means, and by suggesting that the IDREs exceeded their powers in rendering those awards. *See, e.g.,* Compl. ¶¶ 372, 373, 376. Vacatur of an arbitration award is rare, however, and Anthem's allegations against the Provider Entities do not rise to the requisite level under either section of the FAA. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013) ("Under the FAA, courts

may vacate an arbitrator's decision 'only in very unusual circumstances.'" (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942 (1995)).

"Fraud" in § 10(a)(1) of the FAA "requires a showing of bad faith during the arbitration proceedings, such as bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence." *Guardian Flight II,* 140 F.4th at 621 (incorporating the FAA definition of fraud and undue means into the NSA); *see Mitchell v. Ainbinder*, 214 F. App'x 565, 568 (6th Cir. 2007) ("[F]raud require[s] proof of some sort of willful intent to give false testimony."). The analysis focuses on misconduct, not zeal or mistake. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350-51 (2011). "Undue means" is an equally demanding standard. It connotes behavior that is immoral if not illegal. *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1403 (9th Cir. 1992); *MCI Constructors, LLC v. City Of Greensboro,* 610 F.3d 849, 857 (4th Cir. 2010); *see Am. Postal Workers Union, AFL–CIO v. U.S. Postal Serv.*, 52 F.3d 359, 362 (D.C. Cir. 1995) (explaining "undue means . . . is equivalent in gravity to corruption or fraud, such as a physical threat to an arbitrator"); *Hoolahan v. IBC Advanced Alloys Corp.*, 947 F.3d 101, 112-13 (1st Cir. 2020); *PaineWebber Grp., Inc. v. Zinsmeyer Trusts P'ship*, 187 F.3d 988, 991 (8th Cir. 1999) ("[C]ircuits have uniformly construed the term undue means as requiring proof of intentional misconduct."); *Guardian Flight II*, 140 F.4th at 622.

In the Fourth Circuit, Anthem must allege, with particularity, that the fraud, corruption, 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. *RZS Holdings AVV v. PDVSA Petroleos S.A.*, 598 F. Supp. 2d 762, 771 (E.D. Va. 2009); *MCI Constructors*, 610 F.3d at 858; *Walnut St. Sec., Inc. v. Lisk*, 497 F. Supp. 2d 714, 723–24 (M.D.N.C. 2007). Anthem cannot credibly claim the alleged fraud was "not discoverable" because

its Complaint details the many junctures at which it lodged objections – albeit often untimely — to the Provider Entities' eligibility claims. *See* Compl. ¶¶ 64, 66, 67, 117, 119, 130. For example, the Complaint alleges that "[w]hen Defendants open negotiations for services subject to the Virginia Balance Billing Law, Anthem informs them that the claim is not governed by the federal NSA" and that "when Defendants manage to push through ineligible disputes . . . Anthem often directly notifies Defendants that the items or services at issue in their IDR initiation violate the NSA's eligibility requirements." *Id.* So too for each of the examples in the Complaint, for which Anthem alleges the dates on which it objected to the Provider Entities' attestations concerning eligibility. *See id.* ¶¶ 166, 173, 174, 176, 185, 192, 198, 204, 210, 216, 221. In other words, the alleged misrepresentations were not just discoverable, but Anthem fails to specify an actual instance in which it lacked possession of the pertinent information. Indeed, Anthem *actually* raised ineligibility, for each example, prior to the IDRE award determinations. *Id.; see RZS Holdings AVV,* 598 F. Supp. 2d at 772 (declining to grant vacatur when the alleged fraud was discovered before the arbitral award was issued); *Walnut St. Sec., Inc.*, 497 F. Supp. 2d at 723 (same). Anthem's own Complaint defeats its attempt to invoke the FAA's fraud exception.

Anthem also has not alleged the level of fraud or undue means required for vacatur under the FAA. The fraud and undue means Anthem alleges against the Provider Entities centers on "Defendants' false attestations of eligibility," including attestations that it believed the items qualified for the IDR process. Compl. ¶ 129. But contestable evidentiary matters are not fraud within the meaning of the FAA. For example, in a recent Fifth Circuit case, the court upheld the dismissal of a complaint seeking to vacate IDR arbitrations on the grounds that one party misrepresented the QPA amount during the proceedings, stating that such misrepresentations, even

if true, "fall short of fraud" that undermines the arbitration process. *Guardian Flight II*, 140 F.4th at 621-22.

The remainder of Anthem's allegations of fraud and undue influence are that the Provider Entities initiated a substantial volume of IDRs, seeking payment amounts with which Anthem disagreed. But there is no legal cap on the number of disputes a party can file; there is no policy statement that has disfavored particular quantities; and a large volume of disputes can be expected given Anthem's and the Provider Entities' presence in their respective spaces. Further, if the Provider Entities' offered payment amounts were as "outrageous" as Anthem claims, the function of baseball arbitration would help Anthem, as the IDREs were free to choose Anthem's offer instead. The natural inference from the IDREs choosing Anthem's offer less than 15% of the time is that Anthem is too aggressive or disengaged. Here, there are simply no allegations of "bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence" or conduct "equal in gravity to bribery . . . or physical threat to an arbitrator." *Guardian Flight II,* 140 F.4th at 621; *Am. Postal Workers Union*, 52 F.3d at 362.

Anthem likewise has not met the high standard for vacatur under FAA Section 10(a)(4). Anthem alleges that the IDREs exceeded their powers "by issuing payment determinations on items and services that are not qualified IDR items and services within the scope of the NSA's IDR process." Compl. ¶ 373. In other words, Anthem posits that if IDREs got eligibility determinations wrong, the untimeliness of its objections should not matter. Even if true that the IDREs got some eligibility determinations wrong, "[a] party seeking relief under that provision bears a heavy burden. 'It is not enough to show that the arbitrator committed an error—or even a serious error.'" *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 564 (2013) (quoting *Stolt-Nielsen v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010)) (editing omitted). The test for when

an arbitrator exceeds his authority is "when an arbitrator strays from interpretation and application of the agreement and effectively 'dispenses his own brand of industrial justice' that his decision may be unenforceable." *Stolt-Nielsen*, 559 U.S. at 671 (quoting *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001)) (editing omitted). "Only if 'the arbitrator acts outside the scope of his ... authority' – issuing an award that 'simply reflects his own notions of economic justice' . . . – may a court overturn his determination." *Oxford Health*, 569 U.S. at 569 (quoting *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62 (2000)) (editing omitted). As the Fourth Circuit has said, "a court . . . may determine only whether the arbitrators acted within the scope of their authority, and may not consider whether the arbitrators acted correctly or reasonably." *AO Techsnabexport v. Globe Nuclear Servs. & Supply GNSS, Ltd.*, 404 Fed. Appx. 793, 797 (4th Cir. 2010) (citing *Three S Delaware, Inc. v. DataQuick Info. Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007)).

Here, determining eligibility and choosing between two offers of payment is precisely the job of IDREs. Anthem has not alleged the IDREs abrogated these responsibilities, nor does it get specific about deficiencies in any particular IDREs' findings. At most, Anthem alleges that the IDREs eligibility review was "cursory," that IDREs are incentivized financially to find eligibility, and that the deadlines were too short for Anthem because of the volume of disputes. Compl. ¶¶ 70, 123, 128. This is not remotely enough to overcome the NSA's bar to judicial relief. Anthem has not triggered a basis for judicial review under any provision of the NSA, thus all claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

III. ANTHEM FAILS TO STATE A RICO CLAIM.

A. The Complaint Fails to Allege a Pattern of Racketeering Activity.

To sufficiently allege a RICO claim, a plaintiff must plead, among other things, sufficient continuity of predicate acts to constitute a pattern of racketeering activity. 18 U.S.C. § 1961(5). In the Fourth Circuit, there is no "mechanical" test for determining the existence of a RICO pattern; instead, it is a matter of "criminal dimension and degree," with the focus on whether the related predicate acts indicate "ongoing unlawful activities whose scope and persistence pose a special threat to social well-being." *Int'l Data Bank, Ltd. v. Zepkin,* 812 F.2d 149, 155 (4th Cir. 1987); *US Airlines Pilot Ass'n v. Awappa LLC,* 615 F.3d 313, 318 (4th Cir. 2010).

The Fourth Circuit has identified several factors to consider when determining whether a RICO pattern exists. These factors "include the number and variety of predicate acts and the length of time over which they were committed, the number of putative victims, the presence of separate schemes, and the potential for multiple distinct injuries." *Brandenburg v. Seidel,* 859 F.2d 1179, 1185 (4th Cir. 1988), *overruled on other grounds by Quackenbush v. Allstate Ins. Co.,* 517 U.S. 706 (1996); *see also HMK Corp. v. Walsey*, 828 F.2d 1071, 1073-74 (4th Cir. 1987).

Courts have consistently held that a requisite pattern under RICO cannot be based on a single scheme or victim, or even a small number of victims. *See Anderson v. Advancement, Educ. & Employment of Am. Indians,* 155 F.3d 500, 506 (4th Cir. 1998) (holding that a single scheme to avoid compensating a single victim did not give rise to a pattern under RICO); *Menasco, Inc. v. Wasserman,* 886 F.2d 681, 684-85 (4th Cir. 1989) (holding that a scheme to defraud only a couple of victims did not constitute a RICO violation); *Flip Mortgage Corp. v. McElhone,* 841 F.2d 531, 538 (4th Cir. 1988) (holding that a fraudulent scheme spanning several years but impacting a single victim did not constitute a RICO violation); *Int'l Data Bank*, 812 F.2d at 155 (finding that

allegations of multiple acts of securities fraud involving use of a misleading prospectus to a handful of investors in a stock offering was insufficient to satisfy RICO's pattern requirement because the alleged predicate acts were all designed to defraud a small group of victims in connection with a single transaction). The Fourth Circuit is "'cautious about basing a RICO claim on predicate acts of mail and wire fraud because it will be the unusual fraud that does not enlist the mails and wires in its service at least twice' – and that counsels weighing the number of putative victims carefully." *Oriole Grp., LLC v. Pool Scouts Franchising, LLC*, 791 F. Supp. 3d 661, 691 (E.D. Va. 2025) (quoting *GE Inv. Private Placement Partners II, v. Parker,* 247 F. 3d 543, 549 (4th Cir. 2001)).

Anthem's RICO claims do not survive under this analysis. As Anthem acknowledges "[t]he predicate acts also had the same or similar results, participants, victims (including Anthem), and methods." Compl. ¶ 286. First, Anthem has not alleged a variety of predicate acts illustrative of a pattern under RICO. *See Parcoil Corp. v. NOWSCO Well Serv., Ltd.*, 887 F.2d 502, 504 (4th Cir. 1989) (finding that predicate acts consisting of seventeen falsified reports sent over a period of four months did not establish a RICO pattern); *Starr v. VSL Pharms., Inc.*, 509 F. Supp. 3d 417, 440 (D. Md. 2020) (finding the variety of predicate acts can be relevant to the existence of a RICO pattern). To the contrary, the Provider Entities' alleged misconduct can be reduced to a single manner of bad act—the frequent filing of zealous IDR process initiations.

Second, there is only ***one*** putative victim of SCP's purported scheme, Anthem.[9]

Third, Anthem has alleged only ***one*** scheme—to force Anthem into the allegedly baseless IDR—causing a ***single*** type of injury—Anthem's outlay of millions of dollars in "improper"

[9] While Plaintiffs bring suit on behalf of two named entities, as described above, Anthem Health Plans of Virginia and Healthkeepers Inc. are owned by a common ultimate parent company, share the same principal place of business, and are not alleged to have independent staff or management. The Complaint defines both together as "Anthem," and alleges they maintain the same principal place of business. Compl. Intro. Paragraph; *id.* ¶¶ 12-13.) They are, in fact, a single major insurance company that dominates the Virginia marketplace.

awards and fees. Compl. ¶¶ 126, 139, 158, 292, 289, 297, 308, 309, 317, 356, 383. The existence of but a single scheme has been dispositive for a number of courts in declining to find a pattern under RICO. For example, in *HMK Corp. v. Walsey,* 828 F.2d 1071 (4th Cir. 1987), the complaint alleged that the developer defendants had violated RICO by making a series of misrepresentations to government officials over a period of four years in order to influence zoning decisions. The court rejected plaintiffs' continuity and pattern arguments, finding that the number of predicate acts and the time over which they were committed was more a reflection of the context in which they had occurred—protracted zoning disputes that required the involvement of many different governmental decisionmakers—than of a pattern of criminal activity posing a special threat to social well-being. *Id.* at 1074-76.

Anthem's Complaint is utterly devoid of plausible facts reflecting continuity of a sort that threatens society with ongoing criminal activity. There is ***no*** allegation remotely suggesting that the Provider Entities use "sham" arbitrations, let alone as a regular way of doing business. Of course not, as they mostly treat patients or support providers who treat emergency room patients and are in network with two of the largest insurers (Aetna and Cigna). The closest allegation simply states, in paragraph 286 of the Complaint, that there were "multiple" predicate acts, without alleging a link that makes them the sort of ongoing threat of criminal racketeering activities RICO was designed to combat. *See Menasco,* 886 F.2d at 684 (finding that plaintiffs' allegations failed to satisfy RICO's pattern continuity requirement because "Defendants' actions were narrowly directed towards a single fraudulent goal," and "[t]hey involved a limited purpose: to defraud Menasco, Inc. and Lucky Two, Inc. with respect to their oil interests," which "[c]learly . . . do not constitute ongoing unlawful activities whose scope and persistence pose a special threat to social well-being" (quotation marks omitted)); *Vemco, Inc. v. Camardella*, 23 F.3d 129, 134-135 (6th

Cir. 1994) (finding lack of pattern to support a RICO claim where the plaintiff alleged a single, 17-month scheme to drive a single victim out of business); *Ornest v. Del. N. Cos.,* 818 F.2d 651, 652 (8th Cir. 1987) (finding that a single eight-year scheme to defraud plaintiffs of sales commissions did not satisfy the pattern element of RICO). Anthem's allegations of a single scheme, targeting a single victim, for the purpose of causing a single economic injury (which fall shy of alleging even garden variety fraud) are simply inadequate to constitute the continuity needed for a pattern of racketeering activity.

B. Litigation Activities Are Not Predicate Racketeering Acts.

As the predicate acts for its RICO claims, Anthem relies exclusively on litigation conduct attendant to the IDR process, specifically the initiation of disputes containing allegedly false attestations and inflated payment offers. *See* Compl. ¶ 288. Without also alleging criminal obstruction of justice or sham activities, this reliance is misplaced, however, because, as a matter of law, zealous litigation activities, involving the mailing of litigation documents, even perjurious ones, do not constitute a pattern of racketeering. In the context of discussing predicate acts of illegal threats under RICO, this Court has shown its reluctance to condemn an exercise of litigation rights involving economic interests:

> [T]he use of legitimate economic threats, including the threat or use of litigation, to obtain property is "wrongful" only if the defendant has no claim of right to that purpose. *Sturm*, 870 F.2d at 773; *see also Sosa v. DIRECTV, Inc*., 437 F.3d 923, 939-40 (9th Cir.2006) (holding that the Hobbs Act does not impose liability for the threat of litigation "where the asserted claims do not rise to the level of a sham"); *United States v. Pendergraft*, 297 F.3d 1198, 1206-08 (11th Cir.2002) (finding that threat to file litigation, even if made in bad faith, is not "wrongful" under the Hobbs Act)

Miller v. Dogwood Valley Citizens Ass'n, Inc., No. 3:06cV00020, 2008 WL 3992350, at *5-6 (W.D. Va. Aug. 28, 2008) (ruling that "Plaintiffs have not offered any evidence of other predicate acts to establish the required pattern of racketeering," and entering judgment for defendants on

RICO claim), *aff'd*, 346 Fed. Appx. 925 (4th Cir. 2009); *Kim v. Kimm*, 884 F.3d 98, 104 (2d Cir. 2018) ("[C]onclud[ing] that allegations of frivolous, fraudulent, or baseless litigation activities—without more—cannot constitute a RICO predicate act." (collecting cases)); *Nero v. Mayan Mainstreet Inv 1, LLC*, 645 F. App'x 864, 868 (11th Cir. 2016) ("[F]ederal fraud charges cannot be based on the filing of court documents."); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1087-88 (11th Cir. 2004) (deciding that the "alleged conspiracy to extort money through the filing of malicious lawsuits" did not include predicate acts of extortion or mail fraud under RICO); *Deck v. Engineered Laminates*, 349 F.3d 1253, 1258 (10th Cir. 2003) (deciding that meritless litigation is not a predicate act of extortion under RICO); *Gabovitch v. Shear*, No. 95-1055, 1995 WL 697319, at *2 (1st Cir. Nov. 1, 1995) (concluding that "proffering false affidavits and testimony to [a] state court" does not constitute a predicate act of extortion or mail fraud).

There are compelling policy reasons for a rule that helps avoid a chilling effect, as "[p]rosecuting litigation activities as federal crimes would undermine the policies of access and finality that animate our legal system." *U.S. v. Pendergraft*, 297 F.3d 1198, 1208 (11th Cir. 2002) ("A number of courts have considered whether serving litigation documents by mail can constitute mail fraud, and all have rejected that possibility." (collecting cases)); *Gabovitch*, 1995 WL 697319, at *3 ("[S]imply by alleging that defendants' litigation stance in the state court case was 'fraudulent,' plaintiff is insisting upon a right to relitigate that entire case in federal court. . . . The RICO statute obviously was not meant to endorse any such occurrence."). This rule and the policy against chilling effects on litigation rights apply equally to arbitration proceedings:

> At bottom, the RICO claims are entirely predicated on defendants' initiation and prosecution of non-frivolous litigation, and plaintiff's alleged domestic injuries consist of the legal costs it incurred in resisting the enforcement of a valid and binding arbitral award. This far-fetched theory of RICO liability lacks legal support.

Republic of Kazakhstan v. Stati, 380 F. Supp. 3d 55, 60-61 (D.D.C. 2019) (dismissing RICO claims based on arbitral awards, explaining "[t]he cases plaintiff cites are all distinguishable because the complained-of lawsuits were not only frivolous, but they involved other unlawful conduct, such as bribery and/or the intimidation of witnesses and third parties").

Hence, the Provider Entities' alleged misconduct, which occurred exclusively in furtherance of resolving payment disputes in federal IDR arbitrations, cannot support predicate acts based on a wire fraud theory. There is no allegation of sham litigation, no allegation of obstruction of justice, and no allegation of bribery, witness intimidation, or the like. The RICO claim here, like those filed by Anthem elsewhere, amounts to nothing more than a baseless attempt to chill the statutory rights of healthcare providers throughout the county, and should be dismissed with prejudice.

C. Anthem Cannot Plausibly Allege Proximate Causation Under RICO.

By statute, a civil remedy under RICO is limited to injuries "by reason of" the racketeering activity, thereby imposing a strict proximate cause requirement. Actions premised on mail and wire fraud also require a showing of proximate causation. *See Slay's Restoration, LLC v. Wright Nat'l Flood Ins. Co.*, 884 F.3d 489, 493 (4th Cir. 2018) (a RICO plaintiff must show that "the alleged violation led *directly* to the plaintiff's injuries").

Anthem's own allegations break the causal chain. Lurking in them is the fact that Anthem knows which emergency services claims are eligible and which are ineligible, and Anthem has an opportunity to object on eligibility grounds. At any rate, Anthem cannot show harm absent an independent arbitrator finding an underpayment after a full and fair opportunity to be heard. To avoid this break in the causal chain, Anthem chooses to show causation by suggesting it "reasonably and justifiably relied on" SCP's false attestations because it was forced to expend

resources, incur expenses, and proceed to ineligible payment determinations. *See, e.g.,* Compl. ¶¶ 186, 193, 199, 325, 326, 333. This professed reliance is belied, however, by other facts stated in the Complaint. Anthem details how it *recognized*, not relied on, the supposed falsity of SCP's eligibility attestations, notified SCP in writing that it disagreed about eligibility, and then lodged (often untimely) objections with the IDREs about the same. S*ee, e.g., id.* ¶¶ 64, 66, 67, 117, 119, 130, 166, 173, 174, 176, 185, 192, 198, 204, 210, 216, 221. In other words, Anthem did not suffer direct injury "by reason of" any alleged misrepresentations because it knew of any falsity, a fact that breaks the causal chain. To the extent any claim was ineligible, Anthem lost because it failed to make a timely objection or the IDRE disagreed with Anthem.

Moreover, Anthem's failure to contest eligibility in a timely manner (as was the case for each of the examples in the Complaint) was a superseding cause of any alleged injuries. *See Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004) (assessing proximate causation and finding plaintiff could not meet burden where sufficient information was made known to it to undermine theory of harm from any falsity). Anthem's own failures severed the direct causal link RICO requires between the alleged injuries and alleged misconduct.

D. Anthem's RICO Conspiracy Claim Cannot Survive.

To plausibly state a RICO conspiracy claim under 18 U.S.C. § 1962(d), Anthem must plausibly allege all the elements of a RICO violation, plus specifically allege an agreement between the co-conspirators to commit the predicate acts. *Foster v. Wintergreen Real Estate Co.*, No. 3:08cv00031, 2008 WL 4829674, at *9 (W.D. Va. Nov. 6, 2008) ("Because the Plaintiffs have not stated a claim under one of the other substantive provisions of RICO, then the conspiracy claim necessarily fails."), *aff'd*, 363 Fed. Appx. 269 (4th Cir. 2010). Because Anthem's substantive RICO claim fails, its RICO conspiracy claim also collapses.

The RICO conspiracy claim fails for the additional reason that Anthem has not plausibly alleged an agreement among any of the Defendants to commit a RICO offense. As one court has reasoned, "[t]o plead a violation of § 1962(d), a plaintiff must allege that 'each defendant agreed that another coconspirator would commit two or more acts of racketeering.'" *Walters v. McMahen,* 795 F.Supp.2d 350, 355 (D. Md. 2011) (citing *United States v. Pryba,* 900 F.2d 748, 760 (4th Cir.1990)), *aff'd*, 684 F.3d 435 (4th Cir. 2012); *see WW, LLC v. Coffee Beanery, Ltd.,* No. WMN-05-3360, 2012 WL 3728184, at *15 (D. Md. Aug. 27, 2012) (same). Anthem has not alleged any unlawful agreement, only threadbare recitals of the elements of an agreement. *See Chambers v. King Buick GMC, LLC*, 43 F. Supp. 3d 575, 608 (D. Md. 2014) (finding conclusory allegations of agreement insufficient because they do not "plausibly lead to an inference that each . . . Defendant agreed that another coconspirator would commit predicate acts"). Anthem provides no details about when an agreement between the Defendants to commit the predicate acts was entered into or the contours of any such agreement. Anthem's RICO conspiracy claim does not pass muster.

IV. ANTHEM'S CLAIMS ARE BARRED BY THE *NOERR-PENNINGTON* DOCTRINE AND VIRGINIA'S ANTI-SLAPP STATUTE.

Anthem's Complaint must be dismissed in its entirety because the Provider Entities' alleged misconduct constitutes core petitioning activity immunized from liability under the *Noerr-Pennington* doctrine and state law. The *Noerr-Pennington* doctrine protects legitimate petitioning of the government. It derives from the First Amendment's Petition Clause, which provides that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." U.S Const. amend. I.

First Amendment protections typically extend to acts in and around litigation, rendering parties immune from liability arising from litigation activity under *Noerr-Pennington*. *See BE &*

K Const. Co. v. N.L.R.B., 536 U.S. 516, 525 (2002); *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 555-56 (2014); *Navient Sols., LLC v. Lohman*, 136 F.4th 518, 524-525 (4th Cir. 2025). While the *Noerr-Pennington* doctrine was initially intended to immunize "actions taken to influence legislative or executive action," *E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), it has since "been expanded to apply to actions taken in adjudicatory proceedings before administrative agencies and courts," and in public or quasi-public arbitration. *Titan Am. LLC v. Riverton Inv. Corp.,* 264 Va. 292, 301 (2002) (quoting *E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961)); *see also Cal. Transport v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *USS-POSCO Indus. v. Contra Costa Cnty. Bldg. & Const. Trades Council, AFL-CIO,* 31 F.3d 800, 811 (9th Cir. 1994) (applying the *Noerr-Pennington* doctrine to "seven suits in federal court and eight arbitration actions"); *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*, 189 F. Supp. 2d 385, 392-93 (E.D. Va. 2002) (finding the doctrine applicable to a quasi-governmental arbitration process to resolve disputes about internet domain names). The IDR process that Congress established by statute, and that is operated under the umbrella of various administrative agencies of the federal government, qualifies as public or quasi-public arbitration. *See Guardian Flight II*, 140 F.4th at 623 (concluding that IDREs are protected by arbitral immunity for their roles in the IDR process).

Virginia's analogue to *Noerr-Pennington* is Section 8.01-223.2 of the Code of Virginia, often referred to as Virginia's "anti-SLAPP statute." Among other circumstances, the statute immunizes persons from tort liability when the claims are based solely on statements regarding matters of public concern that would be protected under the First Amendment. Va. Code § 8.01-223.2; *Malone v. WP Co., LLC*, No. 3:22-CV-00046, 2023 WL 6447311, at *8 (W.D. Va. Sept. 29, 2023) (explaining that the 2023 amendments to Virginia's anti-SLAPP statute broadened its

reach from protecting defendants against only claims of business conspiracy, tortious interference, and defamation to all "tort liability"—thus covering a "broader swath of speech"). While not defined by statute, Virginia courts have defined "matters of public concern" to mean issues of "social, political, or other interest to a community." *Rolofson v. Fraser*, 81 Va. App. 508, 528 (2024) (quoting *Urofsky v. Gilmore*, 216 F.3d 401, 406 (4th Cir. 2000) (en banc)); *Malone v. WP Co., LLC*, No. 3:22-CV-00046, 2023 WL 6447311, at *5 (W.D. Va. Sept. 29, 2023) (finding statement regarding the COVID-19 pandemic and the effectiveness of government-approved vaccines to constitute matters of public concern).

"[F]or speech to rise to the level of public concern, it generally must involve at least some objective nexus to the public welfare." *Carey v. Throwe*, 957 F.3d 468, 478 (4th Cir. 2020). Here, the Provider Entities made the statements at issue directly to a government-sponsored arbitrator. Further, securing fair payment for medical services provided to Virginia residents by emergency medicine providers, through the statutorily created mechanism for addressing surprise billing of patients, easily constitutes matters of public concern under the public-concern test. The Provider Entities' statements in IDRs are thus quintessential First Amendment speech in adjudicatory proceedings, protected from suit under *Noerr-Pennington* and Virginia's anti-SLAPP law.

The narrow "sham litigation" exception to *Noerr Pennigton* also is not applicable here. To apply, the petitioning activity must be (1) "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits," and (2) motivated by a desire "to interfere directly with the business relationships of a competitor." *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.,* 508 U.S. 49, 60-61 (1993). If an objective party can "conclude that the suit is reasonably calculated to elicit a favorable outcome, the suit is immunized under *Noerr*." *Id.* The Complaint does not use the word "sham" or its equivalent, and its focus on

the Provider Entities' win rate in IDR, further takes the claims outside of any "sham" because, by definition, a winning lawsuit is a "reasonable effort at petitioning for redress and therefore not a sham." *Id.* at 60 n.5; *see Baltimore Scrap Corp. v. David J. Joseph Corp.,* 237 F.3d 394, 399 (4th Cir. 2001); *VIBO Corp., Inc. v. Conway*, 669 F.3d 675, 686 (6th Cir. 2012) (finding that a defendant petitioning for a specific outcome from the government and succeeding "is the precise situation that falls outside of the sham exception"). *Noerr-Pennington* and Virginia's anti-SLAPP statute shield the Provider Entities' use of the IDR process, and, by extension, immunize them against Anthem's claims based on those IDR process initiations.

V. ANTHEM'S CLAIMS ARE BOTH COLLATERALLY ESTOPPED AND SUBJECT TO *RES JUDICATA*.

Anthem is barred from relitigating the issues of eligibility and reasonable payment amount in the present forum, as those issues were already fully adjudicated in IDR. The doctrine of collateral estoppel precludes a party from relitigating an issue that has already been decided in a previous action between the same parties. *In re Microsoft Corp. Antitrust Litig.,* 355 F.3d 322, 326-327 (4th Cir. 2004). Courts routinely apply this doctrine to issues decided by agencies and arbitrators. *See B & B Hardware, Inc. v. Hargis Indus., Inc*., 575 U.S. 138, 141-142 (2015) (holding that issue preclusion applies to administrative proceedings); *Chin-Young v. United States*, 774 F. App'x 106, 116 (4th Cir. 2019) ("We are guided by the Court's determination that 'absent a contrary indication, Congress presumptively intends that an agency's determination . . . has preclusive effect.'" (quoting *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 575 U.S. 138, 151 (2015)); *SynQor Inc. v. Vicor Corp.*, 988 F.3d 1341, 1347 (Fed. Cir. 2021). Likewise, the post-arbitration bar extends to the doctrine of *res judicata*. *Fonseca v. Am. Nat's Red Cross*, 20-CV-00526-RJC-DSC, 2021 WL 627043, at *3 (W.D. N.C. 2021) ("'Numerous 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.'" (*quoting Little Six Corp. v. United Mine Workers of Am., Local Union No. 8332*, 701 F.2d 26, 29 (4th Cir. 1983) (editing omitted)).

Issue preclusion through collateral estoppel applies when: (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 Microsoft Corp. Antitrust Litig.,* 355 F.3d at 326-27.

Claim preclusion through *res judicata* applies where "(1) there was a prior claim for relief decided on the merits by a valid and final judgment; (2) the parties are identical or in privity with each other; (3) the claim made in the later suit arises from the same conduct, transaction, or occurrence as the claim filed in the first suit." *Karnani v. Interactive Brokers LLC*, 25-cv-462(LMB/WEF), 2025 WL 1559151, at *5 (E.D. Va. May 30, 2025).

The elements of both issue and claim preclusion are satisfied here. Eligibility for IDR process and the appropriate payment amount are the crux of Anthem's present lawsuit and also the exact issues litigated by the parties, considered by the IDREs, and decided in binding IDR. As described above, the determination of eligibility was a condition precedent to any award, and Anthem, by regulation, had the opportunity to, and sometimes did, raise eligibility challenges ahead of or at the same time as its offers of payment. *See* 45 C.F.R. § 149.510(c)(1)(iii); Compl. ¶¶ 198, 204, 210, 216. Anthem is precluded, by collateral estoppel and *res judicata*, from now relitigating, in a different forum, unfavorable eligibility determinations and award amounts that it now finds disappointing.

VI. ANTHEM'S COMPLAINT DOES NOT SATISFY RULE 9(b).

Rule 9(b) requires plaintiffs to plead claims that sound in fraud with particularity. This means Anthem must articulate the who, what, where, when, and why of the alleged misstatements that underpin its fraud claims. *See Harrison v. Westinghouse Savannah River Co.,* 176 F.3d 776, 784 (4th Cir. 1999); *Xcoal Energy & Res., L.P. v. Smith*, No. 2:07CV00057, 2008 WL 312912, at *1 (W.D. Va. Feb. 4, 2008) ("The requirements of Rule 9(b) have been analogized to the goal of a good newspaper lead-who, what, when, where, and how."). Further, Anthem must allege facts with respect to each defendant's participation in the fraud. *Iron Workers Local 16 Pension Fund v. Hilb Rogal & Hobbs Co.,* 432 F. Supp. 2d 571, 594 (E.D. Va. 2006) ("Group pleading fails to satisfy the requirement that the who, what, where, why and when of the fraud be specified."). Anthem does none of these things. Instead, Anthem's Complaint is rife with generalities and vague group accusations of fraud, not remotely the specifics that Rule 9(b) requires.

A. Anthem Fails to Plead With Particularity Who Made Statements in Connection With Which Billing, and What Was Wrong.

Outside of a few instances that serve as examples of Anthem's delayed objections to eligibility, Anthem never identifies the actors or dates of the "thousands" of allegedly false attestations. Nor does Anthem explain why those "thousands" were false. Instead, it lumps the attestations into three categories: "(1) services and disputes already governed by the Virginia Balance Billing Law, (2) disputes for which Defendants failed to initiate or pursue open negotiations, and (3) disputes already resolved or barred by timing rules." Compl. ¶ 111. Anthem's pleading failures are most evident with respect to the latter two categories, for which it does not include even a single example, despite vague and conclusory allegations of fraud on an "industrial scale." *See id.* ¶ 112. As one court has explained:

> [P]laintiffs are unable to "state with particularity the circumstances constituting fraud" and the "reason or reasons why" each alleged fraudulent statement was in fact misleading, nor can they "state with particularity facts giving rise to a strong inference that the defendant[s] acted with the required state of mind." *See In re PEC Solutions, Inc. Securities Litig*., No. 03–cv–331, 2004 WL 1854202, at *13 (E.D. Va. May 25, 2004), *aff'd*, 418 F.3d 379; *see also In re AXIS Capital Holdings Ltd., Securities Litig*., 456 F. Supp. 2d 576, 585 (S.D.N.Y. 2006). Instead, the Complaint relies on a variety of relatively weak circumstantial evidence—such as various corporate officers' stock trades during the class period and pre-class period examples of fraudulent behavior at BAH, all of which were promptly disclosed to the public….

Langley v. Booz Allen Hamilton Holding Corp., 17–cv–696 (LMB/TCB), 2018 WL 2108291, at *2 (E.D. Va. Feb. 8, 2018).

B. Anthem Fails to Plead With Particularity Any Intentionally False Representations.

Beyond the three general categories of attestations to which Anthem refers, it alleges no facts reflecting a false statement that the Provider Entities intended to make materially false, as opposed to making, at worst, a good faith mistake. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350-51 (2011)(under the FAA, "review under § 10 focuses on misconduct rather than mistake"). After all, Anthem focuses on an allegedly false statement that it attributes to the Provider Entities as one of belief. *See* Compl. ¶ 59 "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.".) At best, Anthem vaguely alleges the Provider Entities' intent based on unspecified information in "patient's insurance cards," the "text of federal laws and regulations, CMS publications and resources," and the IDR process generally. *Id*. ¶¶ 30, 116-17, 324. And, because Anthem "said so" (*id*.) —something the Provider Entities were apparently supposed to take at face value from an adversary, notwithstanding Anthem's agenda to get out of federal and into state dispute resolution. Because the allegations are at least equally consistent with a good-faith belief, contrasted with an intent to defraud, Anthem has failed to satisfy even Rule 8, let alone

the Rule 9(b) pleading standard. *See United States ex rel. Integra Med Analytics, L.L.C. v. Baylor Scott & White Health*, 816 F. App'x 892, 897 (5th Cir. 2020) ("A claim is merely conceivable and not plausible if the facts pleaded are consistent with both the claimed misconduct and a legal and obvious alternative explanation." (cleaned up)); *United States ex rel. Taylor v. Boyko*, No. 2:17-CV-04213, 2020 WL 520933, at *7 (S.D.W. Va. Jan. 31, 2020), *aff'd*, 39 F.4th 177 (4th Cir. 2022) ("Particularly in light of the Rule 9(b) standard, the complaint does not contain factual support for the conclusory allegations that the remaining Defendants knew that the medical records were false"); *U.S. ex rel. Owens v. First Kuwaiti Gen. Trading & Contracting Co.*, 612 F.3d 724, 730 (4th Cir. 2010) (finding that despite plaintiff having "alleged in his amended complaint" suspect work, what the "allegations do not raise is an issue of triable fact on the possibility that [the defendant] somehow dissembled in billing . . . and submitted actionable false claims . . . for work it knew to be substandard or for work it knew it had not done").

C. Anthem Fails to Identify With Particularity the Self-Funded Plans at Issue.

A claim for equitable relief under ERISA can be brought only by a participant, beneficiary, or fiduciary. 29 U.S.C. § 1132(a)(3). Anthem is certainly not a participant or beneficiary, but it also does not expressly claim to be a "fiduciary" for any particular self-funded plan. Instead, it obliquely alleges that it "provides claims administration services for certain health benefit plans governed by ERISA," which entails the "discretionary authority to recover overpayments, including those resulting from fraud, waste, or abuse" and the administration of the IDR process. Compl. ¶¶ 27, 379. But an insurance company does not generally become an ERISA fiduciary simply by performing administrative claims processing. As the Department of Labor's ERISA guidance makes clear, Anthem's provision of "claims administration services" is a ministerial function, entirely lacking the hallmarks of an ERISA fiduciary, i.e. discretionary authority over

the administration of the plan or the management of the plan assets. 29 C.F.R. § 2509.75–8(D–2) (explaining that a person "who performs purely *ministerial functions* . . . within a framework of policies, interpretations, rules, practices and procedures made by other persons," such as applying "rules determining eligibility for participation or benefits," "*processing of claims*," or "collection of contributions" is not a fiduciary under ERISA (emphases added)); *see* 29 U.S.C. § 1002(21)(A); *Dawson-Murdock v. Nat'l Counseling Grp., Inc.*, 931 F.3d 269, 276 (4th Cir. 2019) ("In assessing whether a person or entity qualifies as a fiduciary under ERISA, we have consistently utilized [29 C.F.R. § 2509.75–8]."); *Custer v. Sweeney,* 89 F.3d 1156, 1161 (4th Cir.1996) (summarizing the definition an ERISA fiduciary as anyone who "performs specified discretionary functions with respect to the management, assets, or administration of a plan").

In other judicially noticeable actions, Anthem or an affiliate has even disavowed the ERISA fiduciary designation to avoid liability. *See e.g., Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan,* 138 F.4th 457, 469 (6th Cir. 2025) (Blue Cross of Michigan argued that it was "insulate[d] . . . from ERISA fiduciary duties"); *Technibilt Grp. Ins. Plan v. Blue Cross & Blue Shield of N. Carolina,* 438 F. Supp. 3d 599, 604 (W.D.N.C. 2020) ("Blue Cross' primary substantive argument is that, as a matter of law, it is not an ERISA fiduciary.").

Anthem should not be permitted to imply it is a fiduciary to ERISA plans without pleading with particularity the identity of the specific plan, sponsor, or beneficiaries at issue, and the details of the plans that would make claims under them subject to ERISA. Anthem's ERISA claims therefore warrant dismissal under Rule 9(b).

VII. EACH OF ANTHEM'S STATE LAW CLAIMS FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

As discussed previously, Anthem's state law claims should be dismissed pursuant to the NSA's bar on judicial review, which applies regardless of the state or federal cause of action

alleged (*see* Point II, *supra*). The state law claims also independently fail for the following reasons:

A. Virginia Business Conspiracy (Count III) and Civil Conspiracy (Count VII)

To state a claim for statutory business conspiracy under Virginia law, Anthem must allege that the defendants acted in concert, agreed, associated, mutually undertook or combined together; to intentionally, purposefully, and without lawful justification injure the plaintiff's reputation, trade, business, or profession; and the plaintiff suffered damages as a result of the conspirators' wrongful or tortious act. *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 214-215 (2014). The elements of a civil conspiracy claim are similar: a combination of two or more persons; to accomplish, by some concerted action; some criminal or unlawful purpose, or some lawful purpose by criminal or unlawful means; and resultant damage caused by acts committed in furtherance of the conspiracy. *Commercial Bus. Sys., Inc. v. BellSouth Servs., Inc.*, 249 Va. 39, 48 (1995).

Under *Commercial Bus. Systems*, Anthem's state law conspiracy claims fail because the Complaint does not sufficiently allege a factual basis for the agreement elements of a conspiracy. Specifically, the Complaint does not plausibly (a) allege a single communication in which any of the Provider Entities and AGS agreed to pursue an unlawful objective; (b) specify who supposedly reached that agreement; or (c) describe when or how the agreement was reached—all requirements for a conspiracy under Virginia law. Instead, Anthem strings together separate emergency medicine providers with their parent companies and AGS, and adds the conclusory label that they are a "coordinated enterprise" and "strategic partnership." Compl. ¶ 6. That is not remotely sufficient under the plausibility pleading standard applicable in this Court.

B. Virginia Unfair and Deceptive Trade Practices Act (Count IV)

Anthem alleges unfair and deceptive trade practices by the Provider Entities under the Virginia Consumer Protection Act ("VCPA"). Va. Code § 59.1, *et seq*. That statute restricts certain

conduct in trade and commerce to "promote fair and ethical standards of dealings between suppliers and the consuming public." Va. Code § 59.1-197. By its very language, this law has no bearing on the conduct at issue.

Anthem attempts to shoehorn the present facts into a violation of the VCPA by claiming that "Defendants' out-of-network services wrongfully billed to Anthem" is a "consumer transaction" covered by the statute, and that the Provider Entities' false statements to the IDREs about eligibility are prohibited misrepresentations concerning "sponsorship, approval, or certification." Compl. ¶¶ 313, 314. This argument is a bridge too far. Leaving aside that the Provider Entities never "certified" eligibility—they only attested that to the best of their knowledge the disputes were eligible—billing for out-of-network, emergency services does not remotely fall within any of the six definitions of "consumer transactions" provided for by the law. Va. Code § 59.1-198. Likewise, nowhere are misrepresentations to an arbitral body among the VCPA's laundry list of prohibited acts and practices—all of which involve representations by a supplier to a consumer. *Id.* Any contrary interpretation would have the perverse effect of converting all legal process into a violation of the Act. Further, the Act exempts acts and practices "authorized under laws or regulations of the Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of the Commonwealth or the United States." Va. Code § 59.1-199. Initiating arbitration processes created by Congress to adjudicate medical fee disputes and overseen by federal agencies easily falls within this exception. Anthem's claims under the VCPA should be dismissed.

C. Common Law Fraud (Count V) and Constructive Fraud (Count VI)

Anthem's theory of common law and constructive fraud rests on the conclusory refrain that the Provider Entities "falsely attested" that the contested services were "eligible" for federal IDR

process. The elements of common law fraud in Virginia are: (1) a false representation; (2) of a material fact; (3) made intentionally and knowingly; (4) with the intent to mislead; (5) reasonable reliance by the party misled; and (6) resulting damage to the party misled. *Richmond Metro. Auth. v. McDevitt St. Bovis, Inc.*, 256 Va. 553, 557-558 (1998). Constructive fraud is similar, except it does not require an intent to deceive, only a negligent or reckless misrepresentation that leads to harm. *Blair Construction v. Weatherford*, 253 Va. 343, 346-347 (1997). Fatal to both, again Anthem has not met the Rule 9(b) standards as described above and, indeed, has pleaded facts *contrary* to the reliance elements. For example, Anthem admits that it recognized, notified the Provider Entities, and at times lodged (untimely) objections with the IDREs about ineligibility. S*ee, e.g.,* Compl. ¶¶ 64, 66, 67, 117, 119, 130. In other words, Anthem did not rely on any alleged misrepresentations by the Provider Entities and was not misled at all. Accordingly, the fraud claims must be dismissed.

D. Conversion (VIII)

A civil action for conversion under Virginia law requires well-pleaded facts showing: "(i) the ownership or right to possession of the property at the time of the conversion and (ii) the wrongful exercise of dominion or control by defendant over the plaintiff's property. . . ." *Gordon v. Pete's Auto Serv. of Denbigh, Inc.*, 838 F. Supp. 2d 436, 440 (E.D. Va. 2012) (quoting *Airlines Reporting Corp. v. Pishvaian*, 155 F. Supp. 2d 659, 664 (E.D. Va. 2001)). Anthem claims the Provider Entities are liable for conversion because the payments Anthem made to the Provider Entities in satisfaction of IDR determinations were procured through knowingly false attestations of IDR eligibility. Compl. ¶¶ 361-362. Anthem's conversion claim fails because it has not, and cannot, allege the Provider Entities' *wrongful* exercise of dominion or control over its money. The only money that changed hands between Anthem and the Provider Entities happened at the

direction of an IDRE, after proper consideration of eligibility submissions and each side's payment offers, pursuant to a determination on the merits. *See Bitseller Expert Ltd. v. Verisign, Inc.*, 19-cv-01140 (AJT/JFA), 2019 WL 13251185, at *6 (E.D. Va. Dec. 20, 2019) (finding "defendant's compliance with a valid court order as lawful justification" that precluded a claim for conversion). The conversion claim should be dismissed.

CONCLUSION

Based on the foregoing, Anthem's Complaint should be dismissed with prejudice. Anthem's stunt in filing this lawsuit imposes a tremendous chilling effect and undeserved stigma on emergency medical providers who merely sought to exercise their statutory NSA rights.

Respectfully submitted this 27th day of January, 2026.

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