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

HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,	)	
Plaintiff,	)	
v.	)	**Case No. 5:25-cv-00186-RWS**
ZOTEC PARTNERS, LLC,	)	**Judge Robert W. Schroeder III**
Defendant.	)	

DEFENDANT ZOTEC PARTNERS, LLC'S CORRECTED MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, FOR MORE DEFINITE STATEMENT AND TO PARTIALLY STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT

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I. STATEMENT OF ISSUES

Pursuant to Local Rule CV-7(a)(1), Defendant Zotec Partners, LLC ("Zotec") respectfully moves the Court to dismiss the First Amended Complaint of Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC") (the "FAC"), Dkt. Nos. 21 (sealed) and 22 (unsealed), in its entirety for lack of subject matter jurisdiction, failure to join indispensable parties, failure to state a claim upon which relief may be granted, lack of personal jurisdiction, and improper venue. Alternatively, the Court should order HCSC to replead and partially strike the FAC.

II. PRELIMINARY STATEMENT

This case is a collateral attack on a federal dispute resolution program Congress designed to be fast, final, and largely insulated from judicial review. The No Surprises Act ("NSA") routes out-of-network ("OON") payment disputes into a three-step process culminating in "binding" independent dispute resolution ("IDR") determinations, with judicial review limited to the narrow vacatur grounds Congress imported from the Federal Arbitration Act ("FAA"). HCSC does not accept that bargain. It asks this Court to unwind "thousands" of IDR determinations by relabeling disputed eligibility positions and adverse rulings as "fraud."[1]

HCSC's requested relief proves the point. It seeks declarations that awards are "not binding," injunctions against "enforcement," and damages pegged to award amounts, statutory fees, and payments made as part of the IDR determinations. FAC ¶¶ 179, 194, 209, 214, 216. That relief requires the Court to treat IDR determinations as legally ineffective and then open re-

[1] Ironically, HCSC's initial Complaint in *this* case made exactly the sort of error that it claims is actionable fraud. HCSC's theory of this case is that incorrect statements of fact submitted to a tribunal are common-law fraud. But the FAC confirms that HCSC was wrong on the facts. *Compare* Compl. ¶¶ 76–126, Dtk. No. 3 (unsealed), *with* FAC ¶¶ 81–132 (swapping out certain alleged exemplars). HCSC had to amend to correct its own errors of fact in its signed submission to this Court. If HCSC's theory was right—that an error of fact in a submission to a tribunal is actionable fraud—then HCSC itself would be liable for fraud. Of course, this is not the law.

litigation over eligibility and payment consequences dispute-by-dispute. Congress foreclosed that path, and courts in the Fifth Circuit bar such collateral attacks at the outset.

Preclusion supplies another threshold bar. The FAC pleads that eligibility objections were presented to certified IDR entities, and the IDR entities proceeded and issued determinations. On those allegations, the predicate issue HCSC asks this Court to relitigate was already decided in the forum Congress designated to decide it. Collateral estoppel bars this kind of do-over.

Independent defects require dismissal as well. HCSC lacks Article III standing because each asserted injury depends on intervening, independent decisions by neutral arbitrators, and the relief HCSC seeks would necessarily impair rights held by non-party clinicians. Those clinicians are required parties under Rule 19 because HCSC seeks to strip legal effect from their IDR awards without joining them. The FAC also fails under Rules 8 and 9(b) by pleading a "scheme" in the aggregate, offering a few examples, and seeking sweeping remedies across an undefined universe of disputes while claiming damages in buckets. Petitioning immunities and privileges also separately bar tort liability for advocacy in this government-created adjudicatory process. Personal jurisdiction and venue are also not established on the face of the FAC.

The Court should dismiss the FAC with prejudice. At a minimum, if dismissal is denied, the Court should require a more definite statement identifying the specific disputes, statements, and damages at issue, and it should strike as immaterial and prejudicial matters that only expand discovery into policy grievances untethered to the elements of HCSC's claims.

III. BACKGROUND

A. The NSA: Patient Protection, Fast Finality, and Narrow Review.

The NSA is a patient-protection statute. Congress prevented unwanted surprise balance bills and pulled patients out of payor-clinician leverage fights when insurers underpay for certain OON healthcare services. Congress did not create a new tort regime for payors to sue their IDR

opponents after losing. Congress created a payment-dispute routing system built for speed and finality. Those features are the point.

Before the NSA, an OON clinician billed a plan. The plan decided what, if anything, it would pay without any contract rate. If the plan underpaid, the difference often landed on the patient through balance billing. Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36,872, 36,874 (July 13, 2021). Congress debated competing designs. One approach, which came out of the Senate Committee on Health, Education, Labor and Pensions, would have pegged OON reimbursement to a benchmark rate set by the insurer's median in-network rate, with no neutral dispute resolution. Lower Health Care Costs Act, S. 1895, 116th Cong. (2019). Another approach, reflected in the Ways and Means Committee proposal, expressly rejected federal rate-setting and instead modeled a neutral, arbitration-style process based on existing state IDR systems such as those in New York and Texas that treated the median in-network rate as one factor among several weighed by certified neutrals known as IDR entities ("IDRE"). Consumer Protections Against Surprise Medical Bills Act of 2020, H.R. 5826, 116th Cong. (2020).

Congress ultimately enacted the NSA as part of the Consolidated Appropriations Act, 2021, thereby adopting the Ways and Means Committee's arbitration-based IDR framework rather than the benchmark-rate model proposed in the Lower Health Care Costs Act. *See* Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758–2890 (2020).[2] The NSA capped patient cost-sharing for covered OON services at the in-network amount. 42 U.S.C. § 300gg-111(a)(1)(C)(ii),

[2] The NSA was important because it reached almost 140 million lives covered by ERISA or self-insured employer-based plans. *See* LORI CHAVEZ-DEREMER, SEC'Y OF U.S. DEP'T OF LABOR, REPORT TO CONGRESS: ANNUAL REPORT ON SELF-INSURED GROUP HEALTH PLANS at 5 (Mar. 2025), http://bit.ly/3OVDZok. ERISA plans have traditionally been out of reach for state regulators and are instead regulated by the U.S. Department of Labor. *See id.* at 4.

(b)(1)(A).[3] It then routed payor-clinician payment disputes through a three-step process. 42 U.S.C. § 300gg-111(c). Step one is open negotiation. 42 U.S.C. § 300gg-111(c)(1). Step two is initiation of federal IDR if negotiations fail. 42 U.S.C. § 300gg-111(c)(2). Step three is "baseball-style" arbitration. 42 U.S.C. § 300gg-111(c)(5). The parties submit final offers to an IDRE, who selects one offer as the winner while considering a number of statutory factors.[4] 42 U.S.C. § 300gg-111(c)(5)(A)(i), (B), (C)(ii).

The statutory finality is explicit. IDR determinations are binding and "shall not be subject to judicial review," except on the limited grounds in Section 10(a) of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); 9 U.S.C. § 10(a). Congress made that choice because the program is meant to resolve payment disputes without full-bore litigation.

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[3] The NSA made parallel amendments to the Public Health Service Act, which is enforced by the U.S. Department of Health and Human Services; the Internal Revenue Code, which is enforced by the U.S. Department of Treasury; and the Employee Retirement Income Security Act, which is enforced by the U.S. Department of Labor. Each of these agencies work alongside the Office of Personnel Management (which oversees health benefits plans subject to the Federal Employee Health Benefits Act) to administer the NSA, and Zotec refers to them collectively herein as simply the "Departments." For convenience and ease of reference, Zotec generally cites the Public Health Service Act provisions of the NSA codified in Title 42 of the United States Code and Title 45 of the Code of Regulations. The parallel statutory provisions are codified at 26 U.S.C. § 9816(c), *et seq.*, and 29 U.S.C. § 1185e. The parallel regulatory frameworks are codified at 26 C.F.R. § 54.9816-8T, *et seq.*, and 29 C.F.R. § 2590.716-1, *et seq.*

[4] HCSC repeatedly suggests that this median in-network rate is supposed to be the controlling factor in IDR payment determinations. *See* FAC ¶¶ 3, 33(i), 53, 67, 68, 104, 117, 129, 135, 137, 143. HCSC should know better. *See* 42 U.S.C. § 300gg-111(c)(5)(C)(i)(I)–(II) (directing IDREs to consider the QPA as but one of many factors in a payment determination). The regulations governing how the IDREs apply statutory factors in IDR to determine a reasonable reimbursement amount have been extensively litigated, concluding with this Court's ruling, affirmed by the Fifth Circuit, that, contrary to FAC's representations, the QPA does not control the appropriate amount payable; it is not "key"; it does not predominate; it is but one of several factors IDREs consider when determining payment amount. *See Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 587 F. Supp. 3d 528 (E.D. Tex. 2022) (vacating regulations that required IDREs to begin with the presumption that the QPA is the appropriate rate); *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 654 F. Supp. 3d 575 (E.D. Tex. 2023), *aff'd*, 110 F.4th 762 (5th Cir. 2024) (vacating regulations that continued to inappropriately emphasize the QPA's role at IDR).

As HCSC admits, eligibility is the front door through which parties' submissions enter and IDR awards exit. Not every claim can go through federal IDR. Some are excluded by plan type, government programs, or an applicable "Specified State Law."[5] 42 U.S.C. § 300gg-111(a)(3)(I), (K). NSA regulations and CMS guidance assign IDREs the responsibility to decide whether a dispute is eligible for federal IDR. 45 C.F.R. § 149.510(c)(1)(v); U.S. DEP'T OF HEALTH & HUM. SERVS., U.S. DEP'T OF LABOR & U.S. DEP'T OF THE TREASURY, FEDERAL INDEPENDENT DISPUTE RESOLUTION (IDR) PROCESS GUIDANCE FOR DISPUTING PARTIES: DECEMBER 2023 UPDATE TO OCTOBER 2022 GUIDANCE § 5.5, https://perma.cc/TJ5G-CKFT. The Departments have acknowledged that eligibility work is complex and consumes much of an IDRE's time. Federal Independent Dispute Resolution Operations, 88 Fed. Reg. 75,744, 75,753 (Nov. 3, 2023) (noting that IDREs spend between "50 to 80 percent of their time working on eligibility determinations"). The final CMS IDR Operations Rule, pending since it was proposed in the fourth quarter of 2023, could provide RARC and CARC mandates and other features that would improve the eligibility-determination process. To date, however, the final rule has not been promulgated, forcing frustrated Members of Congress to pen a recent bipartisan letter to the Departments about the Departments' failure to implement the NSA as intended—indicating the payors like HCSC still

[5] The only entities that know (or should know) with certainty if a particular claim is, for example, subject to the Texas state IDR process or the federal NSA process are the health plans. Remittance advice remark codes ("RARCs") and carrier advice remark codes ("CARCs") were approved by CMS before the NSA became effective on January 1, 2022. *See* CMS, REMITTANCE ADVICE REMARK CODES RELATED TO THE NO SURPRISES ACT (Mar. 1, 2022), https://perma.cc/9KE6-BH5G. But there is no mandate that health plans provide the RARCs and CARCs with their explanations of payment. *See id.* The plans oppose RARC and CARC mandates—not because the plans cannot provide the information but so they can instead continue to advocate that clinicians are "flooding" the NSA system with "ineligible" claims. *Compare* Letter from America's Health Insurance Plans to the Departments at 15–16 (Jan. 2, 2024), https://perma.cc/P3WM-35BU, *with* Am. Health Ins. Plans, *New AHIP/BCBSA Survey Shows Nearly 40% of Providers' Surprise Billing Disputes Are Ineligible under No Surprises Act* (Oct. 24, 2025), https://perma.cc/M2KR-YWFK.

operate from a position of superior information, and undermining any notion that Zotec intentionally misrepresented anything to the IDREs. *See generally* Letter from Hon. Jason Smith, Chairman, U.S. House. Comm. on Ways & Means, *et al.*, to Hon. Robert F. Kennedy, Jr., Sec'y, U.S. Dep't of Health & Hum. Servs., *et al.*, (Sept. 5, 2025), **Exhibit A**.

Complexity is inherent in eligibility determinations at the outset. Eligibility often turns on technical features of plan design and state-law overlays, *see, e.g.*, FAC ¶ 32, information that is frequently opaque at the claim level and becomes a live issue in open negotiation. Congress also required payors to make disclosures when adjudicating claims subject to the NSA, including information about balance billing protections and applicable state law. 42 U.S.C. § 300gg-115(c)(1)(C); U.S. DEP'T OF HEALTH & HUM. SERVS., U.S. DEP'T OF LABOR & U.S. DEP'T OF THE TREASURY, FAQS ABOUT AFFORDABLE CARE ACT AND CONSOLIDATED APPROPRIATIONS ACT, 2021 IMPLEMENTATION PART 55, at 12 (Aug. 19, 2022), https://perma.cc/WZ49-7KTL. Even so, the Departments have identified "gaps in communication" and "areas of confusion," including how to determine whether state law or federal IDR applies. *See* Federal Independent Dispute Resolution Operations, 88 Fed. Reg. at 75,760. The system anticipates disputes about eligibility and gives payors a place to object during open negotiations and in IDR. 45 C.F.R. § 149.510(c)(1)(i); Federal Independent Dispute Resolution Operations, 88 Fed. Reg. at 75,754.

The broader context matters. The FAC itself pleads that payors are losing most IDR decisions. FAC ¶ 52; *see also* Matthew McGough et al., *The Performance of the Federal Independent Dispute Resolution Process Through Mid-2024*, Peterson–KFF Health Sys. Tracker (June 12, 2025), https://perma.cc/542N-NUUD (last updated June 12, 2025). In fact, according to CMS, the win rates for clinicians and hospitals have "increased by 3% for the first six months of 2025 (88%) as compared to the last six months of 2024 (85%)." CMS, *Supplemental Background*

on Federal Independent Dispute Resolution Public Use Files January 1, 2025 – June 30, 2025 at 4, https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf. The Departments have also concluded that the Public Use File Data show a tremendous increase in IDRs filed and adjudicated during the first six months of 2025 as compared to the last six months of 2024. *Id.* at 1–2. That backdrop helps explain the rise of follow-on "fraud" litigation filed by plans. But the NSA's design channels disputes back into the IDR program and sharply limits judicial review. It does not contemplate tort suits to relitigate eligibility and unwind "binding" awards.

B. What HCSC Alleges and What It Asks the Court to Provide.

HCSC's theory is not subtle. It asks for damages tied to IDR outcomes and equitable relief that would strip legal effect from IDR determinations. FAC ¶¶ 179, 194, 209, 216. It also asks for forward-looking injunctions to police future submissions and "enforcement." FAC ¶ 216. That relief only works if the Court treats completed IDR determinations as legally ineffective and re-runs eligibility and payment consequences dispute-by-dispute.

HCSC aims its claims at Zotec. But the FAC does not plead that Zotec is a clinician, an insurer, or an IDRE. It pleads Zotec as an intermediary that supports clinicians and participates in IDR on their behalf. FAC ¶¶ 58, 70–71. That matters for framing. HCSC sues Zotec as if it were the legal source of the "binding" decisions and the fee and payment consequences that follow. But the FAC itself describes a tribunal-driven process in which IDREs decide eligibility and payment and issue awards that Congress made binding. *See* FAC ¶¶ 29–34.

Distilled, HCSC alleges three things. First, Zotec initiated IDR disputes HCSC contends were ineligible. FAC ¶¶ 83–90, 95–103, 110–16, 122–31, 170, 186, 202. Second, Zotec made allegedly false portal attestations that items and services fell within the federal IDR process. FAC ¶¶ 73, 86–89, 99–102, 111–14, 124–25. Third, Zotec allegedly used batching tactics that

burdened HCSC's ability to respond. FAC ¶¶ 9–12, 145–153. From there, HCSC claims those submissions led to settlements, awards, and fees it now seeks to recover and unwind. FAC ¶¶ 134–44, 179, 194, 206–14, 216.

The theme is scale. HCSC wants the force of "systemic abuse," but it avoids pleading the dispute-by-dispute facts that would be needed to unwind "binding" determinations at scale. It pleads a handful of examples and then asks for remedies that reach "thousands" of IDRs. FAC ¶¶ 81–132, 133, 216. That posture frames this Motion. This case is not about a single billing dispute. It is an attempt to convert a Congressionally designed, fast, final dispute resolution mechanism into after-the-fact tort supervision, with Zotec cast as the lever.

IV. APPLICABLE STANDARDS

A Rule 12(b)(1) motion is properly granted when the Court lacks statutory or constitutional power to adjudicate a case, and the party invoking jurisdiction fails to establish it. *Piney Woods ER III, LLC v. Blue Cross & Blue Shield of Tex.*, No. 5:20-CV-00041-RWS, 2022 WL 4004790, at *1 (E.D. Tex. Mar. 17, 2022) (Schroeder, J.). Dismissal is also required where a plaintiff fails to join a required party whose rights will be affected. Fed. R. Civ. P. 19; *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305, 1308 (5th Cir. 1986). Under Rule 12(b)(6), a complaint must plead facts that plausibly state a claim. *Davis v. Jones*, No. 5:23-cv-00032-RWS, 2024 WL 2707952, at *2–3 (E.D. Tex. Mar. 13, 2024) (Schroeder, J.); *Crane v. City of Arlington*, 50 F.4th 453, 461 (5th Cir. 2022) (citation omitted). Personal jurisdiction must comport with due process. *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415, 418 (5th Cir. 1993). Finally, venue must be proper under 28 U.S.C. § 1391. *Ortiz v. Robert Holman Trucking*, No. Civ.A. B-06-020, 2006 WL 1098904, at *1–2 (S.D. Tex. Apr. 11, 2006).

In the alternative only, Rule 12(e) permits a more definite statement where a pleading is so

vague that a responsive pleading cannot reasonably be framed, including in fraud-adjacent cases lacking basic particulars. *See, e.g.*, *Fulmer-Stewart v. Woosley*, No. SA-25-CV-00415-FB, 2025 WL 1576505, at *2 (W.D. Tex. Apr. 21, 2025); *Cook v. City of Tyler*, No. 6:16-CV-00333-RWS, 2018 WL 10124886, at *4–5 (E.D. Tex. Mar. 28, 2018) (Schroeder, J.). Rule 12(f) permits striking immaterial or prejudicial matter. *Paris Emergency Ctr., LLC v. Blue Cross & Blue Shield of Tex.*, No. 5:24-CV-00002-RWS, 2025 WL 3171163, at *1 (E.D. Tex. Nov. 12, 2025) (Schroeder, J.); *Unnikrishnan v. IoT.nxt Americas USA, Inc.*, No. 4:22-cv-870, 2025 WL 2107683, at *2 (E.D. Tex. July 28, 2025).

V. LAW AND ARGUMENT

A. This Case Is an Impermissible End Run Around the NSA's Exclusive Review Regime.

This is not a fraud case. It is a bid to unwind "binding" federal IDR outcomes and undermine Congressional intent through tort labels. HCSC can prevail only if the Court treats completed IDR results as legally ineffective and then re-determines eligibility and payment consequences dispute-by-dispute. Congress chose the opposite design. IDR determinations are binding, and judicial review is barred except for narrow FAA vacatur. Everything else is left to program administration. HCSC's request for declarations, injunctions, and damages would replace that structure with court-supervised, after-the-fact tort litigation over thousands of disputes. This is a collateral attack that should end at the threshold.

1. This Lawsuit is an Impermissible Collateral Attack.

HCSC tries to plead around finality by framing its claims as damages for alleged misconduct in IDR rather than as an express request to vacate the awards under the FAA. *See generally* FAC. That framing does not cure the defect; it *is* the defect. The Fifth Circuit has long rejected collateral attacks that seek to undo an adjudicatory outcome by recasting vacatur-type complaints as standalone torts. *See Gulf Petro Trading Co. v. Nigerian Nat'l Petrol. Corp.*, 512

F.3d 742, 744–45, 749–50 (5th Cir. 2008) (dismissing a tort suit as a collateral attack on an arbitration award). The point is practical, not semantic: if the alleged wrongdoing matters only because it produced an adverse award, the claim targets the award's validity and belongs in the FAA vacatur lane. *Tex. Brine Co., L.L.C. v. Am. Arbitration Ass'n, Inc.*, 955 F.3d 482, 488–89 (5th Cir. 2020). That is why "[a]lleging wrongdoing that would justify vacatur is a sign of a collateral attack." *Id.* (citing *Gulf Petro*, 512 F.3d at 749). And it is why the FAA "provides the exclusive remedy for challenging acts that taint an arbitration award." *Allen Cohrs/Allen Cohrs Farms v. Argilogic Ins. Servs., LLC*, No. M-23-218, 2024 WL 2989735, at *3 (S.D. Tex. May 8, 2024).

That is what HCSC pleads, repackaging vacatur-type complaints as tort theories to obtain the award it believes it should have received in IDR: dismissal based on purported ineligibility. *See* FAC ¶ 170, 186, 193–94. It asks the Court to declare thousands of awards "not binding" and to enjoin "enforcement." *Id.* ¶ 216. It also seeks damages keyed to the same determinations, including award amounts, statutory fees, and payments made in their shadow. *Id.* ¶¶ 179, 194, 209, 216. On the FAC's own allegations, those injuries arise only after IDREs determined eligibility, adjudicated payment, and issued awards the NSA says are "binding." 42 U.S.C. § 300gg-111(c)(5)(E)(i). HCSC is therefore not suing over "wrongdoing in and of itself." It is suing over "the impact of the acts complained of on the award." *Gulf Petro*, 512 F.3d at 748–49.

Calling the dispute "eligibility" does not change what must happen for HCSC to prevail. The Court would still have to work backward from binding outcomes and decide, dispute-by-dispute, that the IDR proceeding should never have occurred (because the IDREs failed to apply statutory criteria), that the award should not have issued, and that the downstream payment consequences should be unwound. That is award nullification. Even on HCSC's own framing, the

FAC runs headlong into the same problem. Every count depends on relitigating eligibility determinations that HCSC alleges were presented to, and decided by, the tribunal Congress designated. HCSC pleads that Zotec initiated IDR disputes, HCSC objected on eligibility grounds, and the IDREs proceeded anyway and issued awards. FAC ¶¶ 83–90, 115–16, 124–31. HCSC does not get a second bite by recasting the same eligibility loss as tort liability. The Fifth Circuit treats that framing as what it is: an impermissible collateral attack on an award governed by the FAA's exclusive review mechanism. *Tex. Brine*, 955 F.3d at 488–89; *Gulf Petro*, 512 F.3d at 744–45, 749–50; *Allen Cohrs/Allen Cohrs Farms*, 2024 WL 2989735, at *3. This Court should do the same.

2. Congress Allowed Only Narrow, Award-Specific Review Through FAA Vacatur, Not This Collateral Attack.

Congress did not leave room for the review HCSC seeks. An IDRE's determination "shall be binding upon the parties involved" and "shall not be subject to judicial review," except on the four limited grounds set forth in Section 10(a) of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i). That relief is narrow and award-specific by design. It is not an invitation to relitigate scores of eligibility and payment outcomes through state-law tort litigation.

HCSC seeks the same result without meeting the FAA standard. It wants a global decree that awards are "not binding," plus damages and injunctions keyed to award consequences. FAC ¶ 216. But Congress channeled judicial review into a narrow FAA lane. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i) (limiting judicial review to the four vacatur grounds in Section 10(a) of the FAA). A plaintiff cannot expand that lane by pleading "fraud" and demanding a redo in district court. The Fifth Circuit has recognized the point in the NSA context, noting that IDR determinations are insulated from judicial review except through the FAA vacatur valve Congress incorporated. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025); *Guardian Flight L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 620–22 (5th Cir. 2025).

And even if the Court treated the FAC as a vacatur-by-another-name challenge, it still fails. The FAA does not authorize vacatur based on ordinary accusations about "false statements" in adjudicatory submissions: "[f]raud requires a showing of bad faith during the arbitration proceedings, such as bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence," and "undue means" "connotes behavior that is immoral if not illegal." *Med. Evaluators of Tex.*, 140 F.4th at 621; *see also Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1086 (M.D. Fla. 2023); *GPS of New Jersey MD, P.C. v. Aetna, Inc.*, No. CV2205487ESJSA, 2024 WL 414042, at *3 (D.N.J. Feb. 5, 2024).

The FAC alleges a familiar sequence. Zotec advanced eligibility positions, HCSC objected, and IDREs ruled against HCSC. *See* FAC ¶¶ 69–132. That is not bribery, bias, or destruction of evidence. It is adversarial advocacy resulting in a neutral eligibility decision. HCSC's allegations do not turn that into vacatur-worthy fraud, much less into tort damages designed to unwind "thousands" of "binding" outcomes. This collateral attack should be dismissed.

3. The NSA Did Not Create a Cause of Action for Fraud on the IDR Process.

HCSC essentially asks the Court to create a new private tort called "fraud on IDR," based on alleged misrepresentations in IDR initiation and eligibility administration, and to award damages and equitable relief pegged to IDR outcomes. But Congress already specified how the IDR program is administered and who oversees compliance. 42 U.S.C. § 300gg-111(a)(1). Congress also specified the only judicial-review valve: narrow, award-specific FAA vacatur. 42 U.S.C. § 300gg-111(c)(5)(E)(i). HCSC is trying to add parallel enforcement through tort law, purporting to force a federal court to supervise portal inputs, eligibility screening, and downstream fee and payment consequences at scale.

That overlay has no source of law, and it collapses into the same finality problem. Once the theory depends on re-adjudicating a tribunal's process to unwind its results, the claim is

functionally aimed at the award and belongs, if anywhere, in the vacatur framework that Congress incorporated into the NSA. *Tex. Brine*, 955 F.3d at 488–89; *Gulf Petro*, 512 F.3d at 744–45, 749–50. HCSC's own remedies confirm the point. It seeks a declaration that awards are "not binding" and an injunction to police "ineligible" submissions going forward. FAC ¶ 216. Congress did not set up a court-supervised IDR program. This Court should not either.

4. The Court Should Not Supervise IDR Eligibility Administration Through Tort Litigation.

Even taking the FAC as true, the requested relief would require ongoing judicial management of IDR eligibility. HCSC wants an injunction barring "ineligible" submissions and "false" attestations and a declaration that past awards are "not binding." FAC ¶ 216. But eligibility and process compliance are dispute-specific. They turn on the underlying claim, timing, legal regime, submissions, and the IDR entity's determinations. *See* 42 U.S.C. § 300gg-111(a)(3), (c)(1)(B), (c)(5)(A)–(C). HCSC's theory would pull the Court into those questions across "thousands" of disputes and then keep it there.

That is not a proper equitable role for a district court. Rule 65 requires specificity, not general commands to "obey the law." Fed. R. Civ. P. 65; *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974); *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 373 (5th Cir. 1981). An injunction that simply forbids "ineligible" submissions is too vague to enforce. An injunction that tries to fix vagueness by spelling out eligibility rules turns the Court into an IDR administrator. Either way, HCSC's requested relief is incompatible with a statutory program that assigns eligibility screening, dispute administration, and post-determination management to the Departments and IDREs,[6] with

[6] Recent Departmental guidance confirms how post-determination eligibility disputes are addressed. The Departments have issued technical assistance outlining an internal reopening and correction process that applies after an IDR dispute has been resolved and a determination rendered. U.S. DEP'T OF HEALTH & HUM. SERVS., U.S. DEP'T OF LABOR & U.S. DEP'T OF THE TREASURY, FEDERAL INDEPENDENT DISPUTE RESOLUTION (IDR) TECHNICAL ASSISTANCE FOR

only a narrow judicial-review valve through FAA vacatur. 42 U.S.C. § 300gg-111(c)(5)(E)(i). The Court should decline the invitation and dismiss with prejudice at the threshold.

B. HCSC Lacks Article III Standing.

HCSC's alleged injuries are not fairly traceable to Zotec and would not be redressed by the relief it seeks. On the FAC's own allegations, certified, neutral decision-makers sit between Zotec's submissions and every asserted harm. Those intervening determinations irreparably break traceability and redressability and thus undermine standing.

1. HCSC Cannot Show Traceability Because IDREs Decide Eligibility, Liability, and Fees.

Article III requires "a causal connection between the injury and the conduct complained of," meaning the injury must be "traceable to the defendant and not the result of the independent action of a third party." *S. Christian Leadership Conf. v. Supreme Ct. of State of La.*, 252 F.3d 781, 788 (5th Cir. 2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Fifth Circuit courts reject standing when the alleged harm depends on third parties. *See Benchellal v. Okonite Co.*, No. 4:22-CV-4435, 2024 WL 1057475, at *5 (S.D. Tex. Mar. 11, 2024) (collecting cases).

The FAC alleges Zotec submitted disputes and made eligibility representations. FAC ¶¶ 73, 83–90, 95–103, 110–16, 122–25, 162–65, 170, 182, 186, 202. It also alleges certified IDR entities evaluated submissions, ruled on eligibility, issued determinations, and triggered fee obligations and payment awards. *Id.* ¶¶ 170–173, 193–194. Those are not ministerial steps; they are the legal events that allegedly caused "harm." The FAC thus asks the Court to assume, across "thousands" of disputes, that the IDREs would have rejected the disputes and avoided making awards but for

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CERTIFIED IDR ENTITIES AND DISPUTING PARTIES: ERRORS IDENTIFIED AFTER DISPUTE CLOSURE (June 2025) (hereinafter, "2025 REOPENING GUIDANCE"), https://perma.cc/J6PS-F7YG. Under that guidance, jurisdictional or procedural eligibility issues identified after dispute closure are raised with the IDRE, subject to Departmental oversight—not through tort litigation in district court.

Zotec's conduct. *Id.* ¶¶ 4, 133, 166, 170, 207–209. That is a counterfactual resting on an independent, third-party adjudicatory judgment. Traceability cannot be built on that kind of speculation. *Lujan*, 504 U.S. at 560.

The attempt to recharacterize injury as the mere overhead burden of responding to filed disputes under statutory deadlines does not cure the problem. The FAC's damages categories and requested declarations are pegged to what happened in IDR, not to administrative effort in the abstract. FAC ¶¶ 179, 194, 209, 216. Where an alleged injury turns on intervening, independent decision-making, Article III requires plausible allegations that those decisions would likely have come out differently. The FAC does not plead that dispute-by-dispute, much less at the scale HCSC demands. *See generally* FAC. The Court therefore lacks jurisdiction and should dismiss.

2. HCSC Cannot Show Redressability Because its Requested Relief would Rewrite the IDR Scheme and Adjudicate Non-Parties' Rights.

Redressability fails for the same reason traceability fails. HCSC's claimed injuries arise, if at all, from outcomes issued in payment disputes between payors and OON clinicians through a federally created process. A judgment against Zotec cannot unwind those outcomes or deliver the relief HCSC demands without reaching beyond the parties before the Court.

Start with the relief. HCSC seeks a declaration that awards are "not binding," an injunction against "enforcement" and forward-looking policing of what can be submitted to IDR, and damages pegged to awards, fees, and payments that followed from those awards. FAC ¶¶ 179, 194, 209, 216. That relief targets the legal effect of determinations and the payment rights they created for absent clinicians. *See infra* Section V.D (discussing the consequences under Rule 19).

Article III requires more than a remedy in theory. It requires relief the Court can likely provide through a judgment against the defendant before it. *Lujan*, 504 U.S. at 560–61. Here, "redress" would require the Court to revisit disputes award by award, decide whether IDR should

not have proceeded, and unwind the consequences that followed, all while impairing rights held by non-parties. 42 U.S.C. § 300gg-111(c)(5)(E)(i). A judgment against Zotec cannot lawfully supply that relief in a final and administrable way. The Court should dismiss for lack of standing.

C. HCSC Is Collaterally Estopped from Relitigating Eligibility.

Where a complaint raises issues that were resolved in a prior tribunal, including arbitration, the complaint is subject to dismissal. *See, e.g.*, *Hudnall v. Texas*, No. EP-22-CV-36-KC-RFC, 2023 WL 2338009, at *3–5 (W.D. Tex. Mar. 2, 2023), *report & recommendation adopted*, 2023 WL 2592295 (Mar. 22, 2023). "A party asserting collateral estoppel has the burden of proving that: '(1) the issue at stake is identical to the one involved in the earlier action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in the prior action was a necessary part of the judgment in that action.'" *DeMarquis v. Alorica, Inc.*, No. 1:20-CV-00634-LY, 2021 WL 1930303, at *2 (W.D. Tex. May 13, 2021) (quoting *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 572 (5th Cir. 2005)).

1. Eligibility Was Actually Litigated in IDR and Necessary to Payment Awards and Fees and is the Same Issue HCSC Tries to Relitigate Here.

HCSC's counts all turn on the notion that none of the items and services Zotec submitted in IDR were eligible under the NSA. But HCSC also expressly alleges that Zotec initiated open negotiations and IDR; HCSC objected on eligibility grounds; the IDREs took up the disputes anyway; and the IDR awards issued against HCSC. FAC ¶¶ 69–132. HCSC also alleges that, if the IDREs had decided the items and services were ineligible, the IDR process would have stopped. *Id.* ¶ 33(f) & n.11. Thus, eligibility—the same issue HCSC raises in this case—was a necessary, threshold issue that was presented to and resolved by a neutral decision-maker.

Once a party to IDR contests eligibility and loses, it does not get a second bite. *See DeMarquis*, 2021 WL 1930303, at *2 (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326

(1979)); *see also id.* (quoting *Test Masters*, 428 F.3d at 572). The requested damages, declaration that awards are "not binding," and injunction require the Court to re-determine eligibility dispute-by-dispute. Collateral estoppel exists to prevent just that. Even if HCSC reframes this as "fraud," the predicate issue remains the same: whether these disputes were in fact eligible for IDR. If the IDREs resolved that gateway—and HCSC alleges the IDREs did—HCSC cannot now relitigate it.

2. Strong Federal Interests Counsel Preclusion.

"As a general matter, arbitral proceedings *can* have preclusive effect . . . and the decision to apply it is within the discretion of the district court." *Grimes v. BNSF Ry. Co.*, 746 F.3d 184, 188 (5th Cir. 2014). "[C]ollateral estoppel may apply in federal-court litigation to facts found in arbitral proceedings as long as the court considers the 'federal interests warranting protection.'" *Id.* Strong federal interests warrant protecting Zotec from successive litigation.

Congress deliberately struck a balance in the NSA between protecting patients from surprise bills and ensuring that OON payment disputes are resolved swiftly and with finality through a streamlined, CMS-supervised arbitral forum. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). These are two sides of the same national cost-containment policy: on one side, the NSA spares patients from surprise billing; and, on the other side, cabins the costs of health care billing by creating an extrajudicial framework to resolve OON payment disputes swiftly and with finality. HCSC asks the Court to ignore that balance. HCSC says out of one side of its mouth that the IDR process is binding enough to "trap" it, force its participation, and impose awards and statutory fees on it, FAC ¶ 170, but, out of the other, not binding enough to prevent eligibility relitigation. Congress designed a binding process with adversarial submissions and objection mechanisms in furtherance of a national policy on OON reimbursement. Zotec pursued that process, HCSC participated, and HCSC lost. That should be the end of the story.

D. This Litigation Cannot Proceed Without the Non-Party Clinicians Whose Payment

Rights HCSC Seeks to Undo.

HCSC's equitable theory collapses for a basic reason. It asks this Court to declare IDR awards "not binding" and to enjoin their "enforcement," even though the payment rights created by those awards belong to clinicians who are not parties here. *See* FAC ¶ 216. That is award nullification. It necessarily adjudicates and impairs non-parties' rights. Rule 19 is triggered by the practical effect of the relief requested, not by how HCSC labels its target, and exists to prevent this exact problem. Clinicians have a direct interest in the binding effect of their award determinations and the payment rights that flow from them. Proceeding without them invites inconsistent judgments and unworkable remedies. The Court should dismiss the declaratory and injunctive relief claims because the requested relief cannot be granted in this case without the required parties.

1. The Clinicians are Required Parties.

A declaration that an award is "not binding" does the same work as vacatur. It strips the determination of the legal force Congress attached to it. Congress made IDR determinations binding and insulated them from judicial review except through the narrow vacatur lane. The Court should treat the requested declaration according to its effect, not its label. Fed. R. Civ. P. 8(e). *See, e.g., U.S. Bank Nat'l Ass'n v. Verizon Commc'ns Inc.*, No. 3:10-CV-1842-G, 2012 WL 3100778, at *16 (N.D. Tex. July 31, 2012). Accordingly, the FAC should be dismissed as an impermissible collateral attack as discussed above. *See supra* Section V.A.

The equitable request also fails under Rule 19 for an independent reason. Clinicians are required parties because the relief HCSC seeks would directly impair their rights. IDR determinations resolve payment disputes between payors and providers. When HCSC asks this Court to declare awards "not binding" and to enjoin their "enforcement," it is asking the Court to strip clinicians of the benefit of determinations entered in their favor. FAC ¶ 216.

Rule 19 does not permit adjudication *in absentia*. A non-party is required when the Court

cannot accord complete relief among existing parties in the non-party's absence, or when disposing of the action without it may impair the non-party's ability to protect its interest or expose existing parties to inconsistent obligations. Fed. R. Civ. P. 19(a)(1), (b). The Fifth Circuit applies that rule to require joinder when the relief sought would affect an absent party's rights in the subject matter. *Pulitzer-Polster*, 784 F.2d at 1309.

That is this case. A declaration that awards are "not binding," plus an injunction against "enforcement," would necessarily impair clinicians' interests in determinations Congress made "binding." *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i). It would also invite inconsistent judgments about the same determinations, forcing Zotec to comply with an order premised on award invalidity while clinicians pursue payment rights premised on award validity. Rule 19 exists to prevent that outcome. HCSC chose not to sue the clinicians whose awards it seeks to nullify. The Court should dismiss for failure to join required parties.

2. Clinicians Cannot Be Joined, and Rule 19(b) Requires Dismissal, Not a Court-Run Do-Over of IDR.

Rule 19 analysis does not end with a finding that a non-party is a "required party." If a required party cannot be joined, the Court must decide whether the case can proceed "in equity and good conscience," considering prejudice, whether relief can be shaped to reduce prejudice, adequacy of a judgment, and whether the plaintiff has an adequate alternative remedy. Fed. R. Civ. P. 19(b). And once "an initial appraisal of the facts indicates that a possibly necessary party is absent, the burden of disputing this initial appraisal falls on the party who opposes joinder." *Pulitzer-Polster*, 784 F.2d at 1309. If joinder is infeasible, the court then asks whether the absent party is indispensable. *HS Res., Inc. v. Wingate*, 327 F.3d 432, 439 (5th Cir. 2003).

This FAC makes a workable joinder analysis impossible and, on its own terms, pushes toward dismissal. HCSC seeks a declaration that "thousands" of IDR awards are "not binding" and

an injunction barring their "enforcement." FAC ¶¶ 4, 133, 216. But it never identifies the universe of awards or the award-holding clinicians whose rights would be affected. It pleads six "representative examples" and then seeks relief that necessarily extends far beyond them. *Id.* ¶¶ 81–132, 139–43, 153, 216. That is not a minor pleading gap. Clinician rights under the NSA are award-specific. Rule 19 cannot be applied in the abstract when the FAC withholds who the real rights-holders are. *See* Fed. R. Civ. P. 19(a)(1)(B)(i); *Pulitzer-Polster*, 784 F.2d at 1308.

Even if the Court assumes joinder is infeasible, Rule 19(b) points the same way. Declaring awards "not binding" or restraining "enforcement" would prejudice absent clinicians by nullifying payment rights without notice or a chance to be heard. That prejudice cannot be cured by "shaping" relief because HCSC's remedies are categorical and award-directed. A judgment rendered without the award holders would also be inadequate in practice, inviting follow-on fights and inconsistent outcomes wherever clinicians pursue the same awards. And dismissal does not leave HCSC remediless. It simply requires HCSC to pursue award-specific challenges through the post-determination mechanisms the NSA provides, however limited Congress may have made them, which the FAC does not allege HCSC has done. *See* 2025 REOPENING GUIDANCE, https://perma.cc/J6PS-F7YG; *see also United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63–65 (1956) (suspending courts' jurisdiction where "enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body"); *Wagner & Brown v. ANR Pipeline Co.*, 837 F.2d 199, 201–02 (5th Cir. 1988) (applying the primary-jurisdiction doctrine where Congress, through statute, delegated regulatory authority to the Federal Energy Regulatory Commission to "determine what components should be included in the first sale price for natural gas").

In short, infeasible joinder is not permission for a global injunction or a court-run eligibility

program. It is the reason Rule 19(b) exists. Equity and good conscience require dismissal.

E. The FAC Fails Both Rule 9(b) and Rule 8.

HCSC calls this a fraud case. The FAC reads like something else. It reads like a policy grievance about losing in IDR, repackaged as a "scheme" so the Court will relitigate eligibility and unwind outcomes.

Rule 9(b) does not permit fraud by atmosphere. *See* Fed. R. Civ. P. 9(b). It demands particulars. Who said what. When it was said. Where it was said. What made it false. How it caused a concrete loss. *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 177–78 (5th Cir. 1997). HCSC does not plead those basics across "thousands" of disputes. It pleads in the aggregate, offers a few illustrations, none of which demonstrate any false statements, and asks the Court to presume the rest. Rule 9(b) requires more.

The FAC fails under Rule 8 for the same structural reason. The FAC's narrative has an obvious lawful explanation: adversarial submissions, objections by HCSC, and independent decisions from IDREs. When the "scheme" label is doing all the work, plausibility collapses.

1. The FAC's "Scheme" Pleading Does Not Satisfy Rule 9(b).

Rule 9(b) requires the "who, what, when, and where" of the alleged misrepresentation. *Williams*, 112 F.3d at 178. And it must be applied "with force" and "without apology." *Id.* HCSC does not meet that standard. It treats Zotec as a single speaker and does not identify who made what statement, in what submission, to whom, and on what date. *See, e.g.*, FAC ¶¶ 162–165, 181–183, 196–200. It also treats disputed eligibility positions as "false" by label, not by pleading the dispute-specific facts that make a particular statement false. *See, e.g., id.* ¶¶ 162–166, 174.

Representative examples do not cure that defect when the universe is left undefined. The Fifth Circuit allows exemplars in some settings, but only where the complaint defines the set of challenged transactions and uses examples to illustrate how the fraud operated within that defined

set. *See United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 190 (5th Cir. 2009); *SC Shine PLLC v. Aetna Dental, Inc.*, No. SA-22-CV-0834-JKP, 2023 WL 4216989, at *20 (W.D. Tex. June 26, 2023); *El Paso Disposal, LP v. Ecube Labs Co.*, 766 F. Supp. 3d 692, 707–08 (W.D. Tex. 2025). This FAC does the opposite. It targets "thousands" of disputes but only provides a few limited examples and does not identify the disputes that comprise the alleged scheme. *See* FAC ¶¶ 4,133; *see also id.* ¶¶ 81–132, 139–43, 153 (providing six exemplars). Rule 9(b) does not allow a plaintiff to accuse first and specify later. *Grubbs*, 565 F.3d at 190–91 (requiring concrete factual details sufficient to support a strong inference of fraud and guarding against fishing expeditions).

2. The FAC's Requested Relief Confirms the Rule 9(b) Defect.

HCSC's damages theory exposes the same Rule 9(b) failure from a different angle. Instead of tying specific misrepresentations to defined disputes and resulting injury, the FAC pleads damages in buckets: IDR awards, administrative fees, overhead costs, and settlements. FAC ¶¶ 179, 194, 209, 211–14. That is not particularity. It is aggregation. Rule 9(b) requires allegations that connect a specific allegedly fraudulent statement to a specific loss.

That linkage matters because of the elements HCSC chose. Common-law fraud, fraudulent inducement, and negligent misrepresentation require justifiable reliance on, and injury caused by, the alleged misrepresentation. *See infra* Sections V.G.1–3. Yet the FAC does not identify which awards within the alleged "many thousands" were procured by actionable misrepresentations, which fees correspond to which disputes, or which settlements were induced by which statements. *See* FAC ¶¶ 133, 179, 194, 209. It offers totals and labels them "scheme" damages. *See id.* ¶¶ 69, 133, 179, 194, 209. Courts reject fraud pleadings that assert aggregate damages without alleging which specific statements caused which specific losses. *See, e.g.*, *Gregory v. Houston Indep. Sch. Dist.*, No. H-14-2768, 2016 WL 5661701, at *7 (S.D. Tex. Sept. 30, 2016).

3. The FAC Fails under Rule 8 for the Same Structural Pleading Failures.

Rule 8 requires plausibility. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is not plausible where the alleged facts are consistent with a lawful, "obvious alternative explanation." *United States ex rel. Integra Med Analytics, L.L.C. v. Baylor Scott & White Health*, 816 F. App'x 892, 897 (5th Cir. 2020). That is HCSC's problem. The FAC's "scheme" theory is at least as consistent with ordinary disagreement inside a complex statutory framework as it is with fraud. *See* FAC ¶ 133.

HCSC alleges it told Zotec certain disputes were ineligible, and Zotec proceeded to IDR and attested to eligibility. FAC ¶¶ 75; 154–60. Even if true, that is not fraud. A notice of disagreement is not proof of falsity. It is proof of dispute. And the NSA regime is built to resolve disputes through adversarial submissions and neutral decisions. Again, HCSC is claiming fraud when it is simply unhappy with the IDREs' determinations.

That is also the "obvious alternative explanation" the FAC cannot plead around. It alleges objections, contested eligibility positions, and independent decisions by IDREs. HCSC describes the normal operation of an adversarial, tribunal-driven process. It does not plausibly allege a sweeping fraud scheme spanning "many thousands" of disputes. *See Integra*, 816 F. App'x at 897.

F. Petitioning Immunities and Privileges Independently Bar HCSC's Tort Theories.

HCSC's tort theories collide with an independent barrier. They target petitioning in an adjudicatory forum. The alleged "misrepresentations" are, in substance, submissions and arguments made to invoke and prosecute IDR disputes before neutral decisionmakers. Our system does not let a disappointed litigant punish that advocacy by relabeling it as fraud or misrepresentation after the fact.

Two doctrines reach the same result. The First Amendment protects petitioning of government decision-makers, including in agency and quasi-adjudicatory settings. Texas law

separately recognizes an absolute privilege for statements made in, and pertinent to, quasi-judicial proceedings. If this case proceeds, every contested eligibility position becomes a tort claim waiting to happen whenever a payor loses in IDR. These doctrines exist to prevent that outcome.

1. *Noerr-Pennington* Bars Liability for Petitioning Activity in IDR.

The First Amendment protects the right to petition and bars tort liability for advocacy directed to government decisionmakers. *E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136–37 (1961); *Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965). The doctrine is not limited to antitrust. *Video Int'l Prod., Inc. v. Warner-Amex Cable Commc'ns, Inc.*, 858 F.2d 1075, 1084 (5th Cir. 1988). *Noerr-Pennington* shields petitioning activity from being chilled by follow-on liability, including under common-law tort theories. *Id.* And it applies to petitioning before both courts and federal government agencies. *Prof'l Real Estate Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 56–57 (1993) (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)).

That is what HCSC is suing over. The alleged "misrepresentations" are submissions and arguments made in the federal IDR process to obtain a governmental decision—an IDR determination issued through a government-created and government-supervised dispute resolution program. FAC ¶¶ 8, 73, 88, 101, 113, 124; *see generally* 42 U.S.C. § 300gg-111. Those submissions are not communications made to induce HCSC's reliance. They are advocacy presented to a neutral decision-maker in an adjudicatory process.

HCSC cannot avoid *Noerr-Pennington* by re-labeling petitioning as "fraud"—the immunity applies to objectively reasonable petitioning regardless of alleged motive. *See Prof'l Real Estate Invs., Inc.*, 508 U.S. at 56–57. And the "sham" exception is narrow. The Supreme Court's framework is objective. Only if the petitioning is objectively meritless may a court examine subjective intent. *Id.* at 60. The sham exception is limited to abuse of process for "the

sole purpose of expense or delay," not genuine efforts to obtain an intended result. *Bayou Fleet, Inc. v. Alexander*, 234 F.3d 852, 861 (5th Cir. 2000) (citing *City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 380 (1991)).

HCSC does not plausibly plead objectively baseless petitioning here—nor could it. It alleges that Zotec and its clinician clients obtained determinations in their favor. FAC ¶¶ 8, 73, 88, 101, 113, 124. A successful effort to influence governmental action "cannot be characterized as a sham." *Tricon Precast, Ltd. v. Easi Set Indus., Inc.*, 395 F. Supp. 3d 871, 885–86 (S.D. Tex. 2019) (cleaned up). And the premise that IDREs are "private" does not change the petitioning character of this government-created, government-supervised adjudicatory regime. The Fifth Circuit has described IDREs as neutral arbiters functioning like arbitrators. *Med. Evaluators of Tex.*, 140 F.4th at 623. Moreover, the IDR system is overseen by the Departments; thus, the IDREs are clothed with the authority of federal law. 42 U.S.C. § 300gg-111(c)(6); *see also* 26 U.S.C. §§ 9816, 9834, 4980D; 29 U.S.C. § 1132(a)(5). And the Fifth Circuit does not recognize a fraud exception to *Noerr-Pennington* divorced from the objective sham framework. *See Constr. Cost Data, L.L.C. v. Gordian Grp., Inc.*, 814 F. App'x 860, 868 n.27 (5th Cir. 2020) (*per curiam*). Thus, the FAC fails.

2. Texas Privilege for Advocacy in Quasi-Judicial Proceedings Bars Suit.

Texas law supplies a separate, independent bar: an absolute privilege for communications made in proceedings where parties and witnesses present positions to a decisionmaker. *Crain v. Unauthorized Practice of Law Comm. of Sup. Ct. of Tex.*, 11 S.W.3d 328, 335 (Tex. Ct. App. 1999). The privilege is broad and it is absolute. "Any communication, even perjured testimony, made in the course of a judicial proceeding, cannot serve as a basis for a suit in tort." *Id.*

That protection is not limited to court proceedings. The privilege extends to "quasi-judicial proceedings before governmental executive officers, boards, and commissions which exercise quasi-judicial powers." *Wal-Mart Stores, Inc. v. Lane*, 31 S.W.3d 282, 290 (Tex. Ct. App. 2000).

The principle applies when the proceeding is adjudicatory in function, even if it is not a traditional court. *See id.*; *see also Rizk v. Millard*, 810 S.W.2d 318, 321 (Tex. Ct. App. 1991).

The federal IDR process fits that description. It is an adversarial dispute resolution forum overseen by the Departments and conducted before certified, neutral IDREs who resolve disputes based on party submissions. *See generally* 42 U.S.C. § 300gg-111. Again, the IDR system is overseen by the Departments. 42 U.S.C. § 300gg-111(c)(6); *see also* 26 U.S.C. §§ 9816, 9834, 4980D; 29 U.S.C. § 1132(a)(5). Although IDREs are private actors, they are clothed with authority of federal law and carry out quasi-judicial functions in "baseball-style" arbitrations under a detailed statutory and regulatory scheme. Ryan J. Rosso & Wen W. Shen, Cong. Rsch. Serv., *No Surprises Act (NSA) Independent Dispute Resolution (IDR) Process Data Analysis for 2024*, R48738 (Nov. 26, 2025), https://bit.ly/4ulhclX. The FAC itself alleges that Zotec made representations to IDREs and to the Departments in connection with IDR submissions. FAC ¶¶ 8, 73, 88, 101, 113, 124. While Zotec disputes HCSC's claims of misrepresentation and false attestations, in any event, those are communications made in, and pertinent to, the quasi-judicial proceedings HCSC is challenging.

Allowing HCSC's theory would turn adversarial submissions in a quasi-judicial process into tort exposure whenever the plan loses. That is exactly what the privilege is designed to prevent. The privilege bars HCSC's claims to the extent they rest on statements made in the IDR process. The Court should also dismiss with prejudice on this independent ground.

G. Each Claim Fails Independently under Rule 12(b)(6).

Even if HCSC could clear numerous threshold barriers discussed herein, the FAC still collapses on the elements. These causes of action are not built to relitigate the decisions of an adversarial, tribunal-driven process. They require something HCSC does not plead: actionable statements made to HCSC, justifiable reliance by HCSC, and a causal link between those

statements and a non-speculative loss.

The same mismatch appears count by count. Fraud fails because the complaint relies on a scheme narrative instead of pleading the specifics and the mechanics of reliance and loss. Negligent misrepresentation fails because adversaries do not owe each other a duty to provide accurate guidance and because HCSC's allegations amount to protest and objection, not reliance. Fraudulent inducement fails because there is no alleged contract with Zotec to be induced. Money had and received fails because HCSC does not plead that Zotec holds money that belongs, in equity, to HCSC. And the declaratory and injunctive count fails because it is remedial label-stacking aimed at relief this case cannot deliver. Each claim independently warrants dismissal.

1. Count I: Fraud.

Count I fails under Rules 9(b) and 8 for the reasons explained above. *See supra* Section V(E). But it also fails on the elements the FAC chose to invoke. Start with reliance. HCSC pleads it knew, objected, and warned. *See* FAC ¶¶ 76, 84, 112, 115, 126–128, 170. That is the opposite of reliance. And HCSC cannot have it both ways. Texas common-law fraud requires "actual[] and justifiabl[e] reli[ance]" that caused injury. *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018). "The fourth element [actual and justifiable reliance] has two requirements: the plaintiff must show that it actually relied on the defendant's representation and, also, that such reliance was justifiable." *Id.* Texas law is clear that a party "may not rely justifiably" on a representation when it "knows that it is false or its falsity is obvious." *Wyrick v. Bus. Bank of Tex., N.A.*, 577 S.W.3d 336, 349 (Tex. App. 2019); *see also Darnell v. Rogers*, 588 S.W.3d 295, 305 (Tex. App. 2019).

The FAC pleads objection and dispute, not exploited trust. HCSC alleges that it disagreed with Zotec's positions, and that it failed to convince IDREs that it was right. This describes losing an arbitration, not being defrauded. And HCSC pleads actual knowledge in the exemplars. FAC

¶¶ 84 ("In response, HCSC sent a letter explaining (again) that these services were ineligible[.]" (DISP-3769076)), 87 ("This was untrue." (same)), 89 ("This, too, was untrue." (same)), 100 ("This was not true." (DISP-3086246)), 102 ("Again, however, this was not true . . . ." (same)), 112 ("This was not true, though, as HCSC had never received initiation of an Open Negotiations Period related to these services." (DISP-2266381)), 114 ("This was also a misrepresentation . . . ." (same)), 123 ("However, because Lone Star and Zotec had agreed to the reimbursement rate for these services, they were ineligible for the IDR Process." (DISP-3095991 & DISP-3105200)), 126 ("HCSC submitted objections . . . ." (same)), 127 (same). That pleading defeats reliance as a matter of law. *Vanderbilt Mortg. & Fin., Inc. v. Flores*, 735 F. Supp. 2d 679, 691–92 (S.D. Tex. 2010); *Matis v. Golden*, 228 S.W.3d 301, 311 (Tex. Ct. App. 2007).

Applying the label "mandatory process" to IDR does not change the reliance element. The FAC does not allege HCSC was induced into action by trusting Zotec. It alleges HCSC contested eligibility, objected in real time, and fought these disputes inside a tribunal-driven process. FAC ¶¶ 76, 126–128, 154–160, 170. That is not reliance. It is litigation posture. HCSC cannot plead deception while simultaneously pleading it treated the challenged statements as wrong when made. *See infra* Section V.G.1.

Causation fails for the same structural reason. The FAC does not allege a bilateral transaction where a statement to HCSC induced it to pay Zotec. It alleges an adversarial process culminating in IDREs' eligibility and payment determinations and the ensuing awards and statutory fees. FAC ¶¶ 33(e)–(j), 170–173. HCSC also admits that neutral, certified IDREs made independent decisions about eligibility and payment amounts. *Id.* ¶¶ 90–91, 103, 105, 116, 118, 129–31. Those intervening adjudicatory determinations break the causal chain and turn HCSC's theory into a counterfactual about what the decisionmaker would have done absent Zotec's alleged

conduct. The FAC does not plead facts making that counterfactual plausible across the universe of disputes it targets. *See generally id.*

Damages are pleaded the same way. HCSC pleads buckets of awards, fees, overhead costs, and settlements, then assumes that labeling a dispute "ineligible" converts every downstream consequence into recoverable damages. *See id*, ¶¶ 179, 194, 209, 213–214. That is not a well-pleaded causal mechanism. It is a conclusion. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Iqbal*, 556 U.S. at 678.

With no plausible reliance, no direct causation, and only category-level damages, Count I does not state a claim for fraud.[7] It should be dismissed.

2. Count II: Negligent Misrepresentation.

Count II fails for two independent reasons. Negligent misrepresentation does not apply to adversarial IDR advocacy. And even if it did, the FAC still does not plead justifiable reliance or proximate causation.

Negligent misrepresentation occurs when a defendant supplies false information for the guidance of others in their business transactions. *Fed. Land Bank Ass'n v. Sloane*, 825 S.W.2d 439, 442 (Tex. 1991). In an adversarial dispute, the relationship is the opposite. Litigants and their agents do not owe a duty to accurately guide the opposing side. *Mitchell v. Chapman*, 10 S.W.3d 810, 812 (Tex. App. 2000). Texas courts apply that principle with discipline. In *Mitchell*, the court rejected a negligent misrepresentation claim because the parties' relationship was "adverse" and the defendant "did not provide false information for the guidance of [the plaintiff] in a business transaction." *Id.* Courts repeatedly refuse to impose negligence liability for statements made in

[7] Again, if HCSC's fraud theory of this case was correct, then HCSC, which filed a signed Complaint with easily demonstrable factual errors requiring amendment, would itself be liable for common-law fraud. Adversarial advocacy is not fraud.

adversarial settings. *See Valls v. Johanson & Fairless, L.L.P.*, 314 S.W.3d 624, 635–36 (Tex. App. 2010) (holding that opposing counsel's statements in settlement negotiations could not support a negligent misrepresentation claim); *Ortiz v. Collins*, 203 S.W.3d 414, 422 (Tex. App. 2006) ("We hold that, as a matter of law, the parties' relationship remained adversarial, and thus any reliance by Ortiz on statements made by appellees during the negotiation process was unjustified and unreasonable."). The policy is obvious. If advocates owed negligence duties to their adversaries for contested positions, every loss would become a tort suit, and the process would collapse.

That logic controls here. The federal IDR process is adversarial and tribunal-driven. Each side submits positions to a neutral decision-maker. Each side objects to the other's positions. *See* 42 U.S.C. § 300gg-111(c). HCSC alleges it did exactly that. FAC ¶¶ 76, 126–128, 154–160, 170. On the FAC's own story, Zotec's alleged submissions were not guidance to HCSC. They were advocacy to invoke and prosecute disputed IDR claims before a decisionmaker. *See id.* ¶¶ 73, 76–77, 170–173. Turning that advocacy into negligent misrepresentation would collapse the line between contesting a position and suing over it after the fact. Texas law does not allow that. *See Mitchell*, 10 S.W.3d at 812; *Valls*, 314 S.W.3d at 635–36; *Ortiz*, 203 S.W.3d at 422.

The FAC also fails on elements. Negligent misrepresentation requires justifiable reliance and a causal link between the challenged statement and the claimed loss. *Fed. Land Bank Ass'n*, 825 S.W.2d at 442. HCSC cannot plead either. It alleges it repeatedly objected to eligibility and fought these disputes in real time, including objections directed to Zotec, federal agencies, and IDREs. *See generally* FAC ¶¶ 81–132. A party "may not rely justifiably" on a representation when it "knows that it is false or its falsity is obvious." *Wyrick*, 577 S.W.3d at 349; *see also Darnell*, 588 S.W.3d at 305. Pleading contemporaneous objection is pleading non-reliance. And once

reliance drops out, proximate causation drops out with it.

Causation also fails for the same structural reason that defeats Count I. The FAC does not allege a bilateral transaction where HCSC relied on Zotec for guidance and paid because of that reliance. It alleges an adjudicatory process in which neutral IDR entities decided eligibility and payment issues, and statutory consequences followed. *See generally* FAC ¶¶ 186, 193–94. That intervening decision-making breaks any direct causal chain from an adversary's submission to HCSC's claimed damages.

Count II is an attempt to turn adversarial IDR advocacy into tort liability. The Court should dismiss it.

3. Count III: Fraudulent Inducement.

Count III fails because fraudulent inducement is a "species of common-law fraud" that "arises only in the context of a contract." *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). It requires a misrepresentation that induces the plaintiff to enter an agreement it otherwise would not have made. *Id.* And it is tied to the validity of an agreement between the parties. *Int'l Bus. Machs. Corp. v. Lufkin Indus., LLC*, 573 S.W.3d 224, 228–29 (Tex. 2019). HCSC does not plead such a contract. It does not allege any agreement between HCSC and Zotec that Zotec supposedly induced by misrepresentation. *See* FAC ¶¶ 195–209. The conduct HCSC challenges is participation in a statutory dispute resolution process, not contract formation between HCSC and Zotec. *See id.* HCSC gestures at settlements, *see id.* ¶¶ 206, 208, but HCSC does not allege that any settlement was a contract with Zotec, that Zotec was a contracting party, or that HCSC entered into any agreement with Zotec in reliance on a misrepresentation. *See id.* ¶¶ 195–209. Without a contract between HCSC and Zotec, fraudulent inducement fails as a matter of law.

4. Count IV: Money Had and Received.

Count IV is an equitable end run. It fails because HCSC does not plausibly plead what a

money-had-and-received claim requires: that Zotec holds money that, in equity and good conscience, belongs to HCSC. *See MGA Ins. Co. v. Charles R. Chestnutt, P.C.*, 358 S.W.3d 808, 813 (Tex. Ct. App. 2012). The doctrine looks to possession and entitlement, not to labels like "wrongful" or "improper." *See id.* (noting that the claim is "not premised on wrongdoing").

HCSC does not plead that kind of possession. It pleads an attenuated, speculative chain: HCSC paid clinicians, and clinicians paid some portion to Zotec. FAC ¶¶ 211–14. That is not enough. Money is fungible. A downstream payment chain does not plausibly show that Zotec holds identifiable funds that belong to HCSC. *See MGA*, 358 S.W.3d at 813 (requiring proof that the defendant "holds money which in equity and good conscience belongs to" the plaintiff). And the claim is not a vehicle to relitigate whether an IDR determination was correct or whether a payment should have been made. *See Gulf Petro*, 512 F.3d at 749–50 (rejecting attempts to repackage challenges to arbitration outcomes as independent claims).

This claim fails for an additional reason. Equity does not intervene where the plaintiff has an adequate remedy at law. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992) ("It is a basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." (quoting *O'Shea v. Littleton*, 414 U.S. 488, 499 (1974) (cleaned up)). HCSC claims in passing fashion in Count V that it lacks adequate legal remedies, but that is a conclusion. FAC ¶ 217. On HCSC's own theory, it seeks relief tied to IDR outcomes, and Congress provided mechanisms to address them. *See, e.g.*, *id.* ¶¶ 179, 194, 209, 211–216; *see also* 42 U.S.C. § 300gg-111(c)(5)(E)(i) (providing for judicial review of IDR determinations under the FAA).

Count IV should be dismissed because HCSC does not plead that Zotec holds money that belongs to HCSC and because equity is not available as a collateral appeal of IDR results.

5. Count V: Declaratory and Injunctive Relief are Remedies, not Legal Claims.

Count V fails at the starting line. Declaratory and injunctive relief are remedies, not standalone causes of action. *See Smitherman v. Bayview Loan Serv., LLC*, 727 F. App'x 787, 791–92 (5th Cir. 2018) (citing 28 U.S.C. § 2201(a)). A request for a declaration presupposes a justiciable controversy supported by a viable underlying claim. 28 U.S.C. § 2201(a); *Sherwin-Williams Co. v. Holmes Cnty.*, 343 F.3d 383, 387 (5th Cir. 2003). HCSC has not stated a plausible claim, so Count V fails for that reason alone.

Count V also fails because the label cannot disguise the substance. HCSC asks the Court to declare that thousands of IDR awards are "not binding" and to enjoin their "enforcement," plus forward-looking relief that would police "ineligible" submissions and "false" attestations. FAC ¶ 216. That is not a modest declaration resolving a discrete dispute. It is a sweeping attempt to unwind "thousands" of awards and police a federal dispute resolution program by lawsuit.

The injunction request underscores the defect. HCSC seeks an "obey-the-law" decree untethered to administrable, award-specific standards. Courts do not issue injunctions that operate as open-ended compliance regimes. *Meyer*, 661 F.2d at 373. Count V is also duplicative. It merely repackages the relief HCSC seeks through its substantive counts, and duplicative declaratory claims "need not be entertained." *Carson v. Fed. Nat'l Mortg. Ass'n*, No. 5:11-CV-925, 2012 WL 13029757, at *2 (W.D. Tex. Jan. 26, 2012).

Finally, again, equity does not step in where adequate legal remedies exist. *Morales*, 504 U.S. at 381. HCSC cannot use Count V to bypass Congress's statutory and procedural mechanisms and ask for a global decree nullifying awards and policing eligibility. It must petition for vacatur, dispute-by-dispute, or to reopen concluded IDRs.

6. HCSC Cannot Recover Payments it Chose to Make Through Settlement or

Other Voluntary Decisions.

HCSC's damages theory also breaks on a simple point of commercial reality. HCSC alleges it incurred obligations by settling reimbursement disputes with clinicians and now seeks to shift those settlement costs to Zotec. FAC ¶¶ 206, 208, 211. That is not how tort damages work. Settlements are voluntary business decisions that reflect risk, cost, and value judgments made in the shadow of uncertainty. *See Gen. Agents Ins. Co., Inc. v. Home Ins. Co.*, 21 S.W.3d 419, 426 (Tex. Ct. App. 2000).

Texas law protects the finality of those choices. *Austin Tr. Co. ex rel. Bob & Elizabeth Lanier Descendants Trs. v. Houren*, 647 S.W.3d 913, 921 (Tex. Ct. App. 2021) ("Texas public policy favors broad freedom to contract as the parties see fit."). Courts analyze commercial contracts "from a utilitarian standpoint, bearing in mind the particular business activity sought to be served." *Id.* And "[i]t is common knowledge that parties who do not believe they are liable for what the plaintiff seeks (or believe they are not liable at all) often make business decisions to settle such claims." *Cathedral of Hope v. FedEx Corp. Servs., Inc.*, No. 3:07-CV-1555-D, 2008 WL 2242546, at *7 (N.D. Tex. May 30, 2008); *cf. Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co.*, 236 S.W.3d 765, 777 (Tex. 2007) (Willett, J., concurring) ("Insurance companies are not eleemosynary institutions, and where, as here, the insured is protected throughout the litigation process, insurers are entitled to exercise their business judgment in deciding whether to settle a claim and for how much.").

HCSC's own allegations place it squarely within the rule Texas courts apply to arm's-length settlements. HCSC is a sophisticated entity. It alleges it voluntarily entered into settlements and incurred payment obligations it now challenges. FAC ¶¶ 206, 208, 211. Texas courts will not disturb a negotiated settlement when, among other things, the parties were represented by counsel, negotiated at arm's length, were knowledgeable in business matters, and used clear release

language to achieve a final resolution. *Austin Tr. Co.*, 647 S.W.3d at 923 (citing *Harrison v. Harrison Interests, Ltd.*, No. 14-15-00348-CV, 2017 WL 830504, at *5 (Tex. Ct. App. Feb. 28, 2017), *perm. app. denied*). HCSC cannot settle for business reasons and later reframe those choices as compelled tort damages because it wishes it had paid less.

Allowing recovery on this theory would also break causation. A settlement is an intervening decision by HCSC. It reflects HCSC's own assessment of risk, cost, and value. *See Gen. Agents*, 21 S.W.3d at 426; *Cathedral of Hope*, 2008 WL 2242546, at *7. HCSC cannot convert that independent business judgment into damages proximately caused by Zotec.

The Court should dismiss any damages theory premised on HCSC's voluntary settlements or other discretionary business decisions.

H. Alternative Threshold Grounds Require Dismissal or Transfer.

Even if HCSC could plead a viable theory, it still must sue Zotec in a court that can hear it. Personal jurisdiction and venue are gatekeeping requirements. This case is about portal-based submissions into a federal program and decisions by neutral IDREs. The FAC does not plead suit-specific, forum-directed conduct by Zotec in this District, or facts showing that a substantial part of the events giving rise to the claims occurred here. The case should be dismissed or transferred.

1. HCSC Does Not Plead Facts Establishing Personal Jurisdiction Over Zotec.

Personal jurisdiction requires minimum contacts such that exercising jurisdiction comports with fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Ruston Gas Turbines*, 9 F.3d at 418. Because Texas's long-arm statute is coextensive with due process, the analysis is constitutional. *Ruston Gas Turbines*, 9 F.3d at 418.

There is no general jurisdiction. Zotec is not "at home" in Texas. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); FAC ¶ 16. That leaves specific jurisdiction, which requires purposeful, suit-related contacts created by Zotec itself. *Walden v. Fiore*, 571 U.S. 277, 285 (2014); *Burger*

King Corp. v. Rudzewicz, 471 U.S. 462, 474–75 (1985); *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 317 (5th Cir. 2021). Third-party facts and downstream effects do not supply the missing contacts. *Walden*, 571 U.S. at 285.

The FAC does not plead those contacts. Its theory is that Zotec made misrepresentations and eligibility attestations in the federal IDR process through portal-based submissions directed to federal agencies and certified IDREs. *See generally* FAC ¶¶ 69–132. But the FAC does not allege where those submissions were made, where the IDREs were located, or how any suit-related communication was purposefully directed into Texas, much less into this District. Instead, it leans on Texas-centric background facts, such as Texas clinicians and patients. FAC ¶ 20. Those are not suit-specific minimum contacts by Zotec. *Walden*, 571 U.S. at 285; *Johnson*, 21 F.4th at 317.

The FAC's conclusory references to "directing services toward Texas clinicians" and Texas offices do not fix the defect. FAC ¶ 20. They are not tied to the portal-based IDR activity the FAC says caused HCSC's harm, and they do not plead that any Texas-office conduct gave rise to the alleged misrepresentations. *Id.*

Because HCSC does not plead purposeful Texas contacts that gave rise to its claims, the Court lacks personal jurisdiction and should also dismiss under Rule 12(b)(2).

2. Venue is Improper or, at Minimum, Transfer is Warranted.

The FAC does not establish venue in this District. HCSC cannot rely on residency-based venue because Zotec does not "reside" in this District for venue purposes. 28 U.S.C. § 1391(c)(2). And without plausible personal jurisdiction over Zotec in Texas, HCSC cannot bootstrap venue through § 1391(c)(2). *See* 28 U.S.C. § 1391(c)(2). Venue turns on where a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. § 1391(b)(2). The qualitative inquiry focuses on the defendant's conduct, not where the plaintiff later feels effects. *Tactacell, LLC v. Deer Mgmt. Sys., LLC*, 620 F. Supp. 3d 524, 530 (W.D. La. 2022); *Bigham v. Envirocare*,

Inc., 123 F. Supp. 2d 1046, 1048 (S.D. Tex. 2000). The FAC alleges portal submissions and adjudicatory decisions in a federal IDR process. *See generally* FAC ¶¶ 69–132. It does not plead that those submissions were made in, directed to, or processed in the Eastern District of Texas. *See id*. Texas-centric background facts about clinicians, patients, or downstream economic effects do not establish venue here. Because HCSC cannot establish venue under § 1391, the Court should dismiss or, if appropriate, transfer to a district where the action could have been brought.

I. Alternatively, the Court Should Order a More Definite Statement.

In support of its vague accusations of "hundreds," "thousands," and "millions," HCSC pleads *six* exemplars totaling *$33,852.87* in alleged damages—*less than half* the threshold for diversity jurisdiction. *Id.* ¶¶ 81–132, 139–43, 153; *compare* 28 U.S.C. § 1332(a). But, HCSC insists, these "are examples of the *many thousands of awards for ineligible services or items in the IDR Process* that Zotec has caused against HCSC." *Id.* ¶ 133. Despite keeping very detailed records of IDR proceedings, *see id.* ¶¶ 81–132, 139–43, 153, HCSC declines to plead a sum certain for damages, promising only that it will prove them later. *Id.* ¶¶ 179, 194, 209, 214.

Given the novelty of the subject matter of this action,[8] the purported magnitude of the bases for HCSC's causes of action, the severity of the vague harm it alleges, and the strictures of Rule 9(b), HCSC should be ordered to replead. *First*, the FAC alleges untold "millions" in damages but is so vague concerning the alleged "hundreds" or "thousands" of IDR proceedings at issue as to frustrate Zotec's ability to meaningfully respond. *See* FAC ¶ 4, 17, 20–21, 69, 152,

[8] There are now approximately twelve of these copycat lawsuits pending across the country, including this one and another pending before the district judge assigned to this case. The NSA is in its infancy, and no court has yet ruled on whether these actions should be dismissed on the many grounds that have been argued across the country, including but not limited to the grounds Zotec raises here. Whichever dismissal ruling comes first will undoubtedly have nationwide effects, underscoring the importance of properly framing each dispute with specific factual contentions and denials.

155–56; *compare Cook*, 2018 WL 10124886, at *4–5.

Zotec is alleged to do systematic and continuous business with untold numerous "Texas providers," plural, but HCSC does not say who they are or how many. FAC ¶¶ 20–21. At most, HCSC names five clinicians. *Id.* ¶¶ 81, 93, 107, 139. Is HCSC alleging that Zotec initiated "hundreds" or "thousands" of IDRs for ineligible items and services for only these five clinicians, causing "millions" in damages? Zotec and the Court do not know because HCSC does not tell them—despite apparently keeping highly detailed records that HCSC itself refers to in the FAC. *See id.* ¶ 155. Zotec should not be required to comb through every business record it has ever created and retained to satisfy Rule 11's strictures when filing an answer. *See* Fed. R. Civ. P. 1.

Second, the original Plaintiff in this action—Blue Cross Blue Shield of Texas ("BCBSTX"), one of HCSC's divisions—regularly demands that clinicians that sue HCSC for claim denials "file a more definite statement 'identifying the claims, contracts, and health plans allegedly at issue and describing which plan terms they rely on for each cause of action,' as well as 'the content of the assignments (and the identity of the assignors) that purportedly transferred rights to Plaintiffs' for" causes of action alleged. *See, e.g.*, *Piney Woods ER III, LLC*, 2020 WL 13042505, at *1 (quoting BCBSTX's motion for a more definite statement filed in that case). *Piney Woods* was an ERISA case, and the Court denied the relief sought. *See generally id.*

HCSC, however, calls this a fraud case, triggering Rule 9(b)'s particularity requirement. Of the "hundreds" and "thousands" of IDR proceedings, HCSC does not specify the "who, what, where, and when" that Rule 9 requires. Without those basics, Zotec must guess what it must admit, deny, or explain in a responsive pleading. Rule 12(e) exists to prevent exactly that. Common sense and the rulings of this Court's sister courts demand that HCSC put more cards on the table, especially when it repeatedly broadcasts that it has the goods. *See Fulmer-Stewart*, 2025 WL

1576505, at *2; *Andretti Sports Marketing La., LLC v. NOLA Motorsports Host Comm., Inc.*, 147 F. Supp. 3d 537, 580 (E.D. La. 2015); *Tribble & Stephens Co. v. St. Paul Fire & Marine Ins. Co.*, No. H-05-4236, 2006 WL 8451513, at *3 (S.D. Tex. May 1, 2006).

Accordingly, the Court should order HCSC to provide a more definite statement that identifies, at minimum, for each IDR dispute HCSC contends is actionable: (1) the IDR dispute number(s) or other unique identifiers sufficient to locate the submission materials and award(s); (2) the date the dispute was initiated, the date(s) of any challenged submissions, and the date of any determination/award; (3) claim-level particulars such as the provider's name, patient name, date(s) of service, and the specific claim(s) or line items HCSC contends were "ineligible"; (4) the specific representation(s) and/or eligibility attestation(s) HCSC contends were false; and (5) how the alleged misrepresentation in that dispute purportedly caused an award or fee and the specific amounts HCSC seeks for that dispute. Identifying this dispute-level information, including the specific allegedly false statements, who made them, and how much damage HCSC allegedly suffered, are not an extra burden. They are the stuff of baseline pleading and fundamental notice requirements. HCSC shows throughout the FAC that it has and keeps detailed records, but then retreats to vague, sweeping allegations of actionable conduct without any sum certain pled.

Although discovery is available, Zotec cannot parse what it needs to discover without additional detail and would be forced to seek sweeping discovery, leading to likely wasteful motion practice when HCSC inevitably objects on overbreadth grounds—especially wasteful when HCSC has all the information it needs to enable Zotec to respond, and when this Court may not even have diversity jurisdiction. *See* Fed. R. Civ. P. 1. Accordingly, if the Court does not dismiss this case, it should order HCSC to replead and provide a more definite statement. Fed. R. Civ. P. 12(e).

J. Alternatively, the Court Should Partially Strike the FAC.

HCSC makes numerous prejudicial allegations that have no bearing on the elements of its

claims and should be stricken under Rule 12(f). *See* Fed. R. Civ. P. 12(f). *First*, HCSC's generalized allegations about how health care reimbursement works generally are not germane to this action, which sounds in a specific statutory scheme governing OON reimbursement. FAC ¶¶ 22–25. Nor does "how health care reimbursement works generally" support the elements of any of HCSC's counts. Therefore, these generalized allegations are immaterial. *Paris Emergency Ctr.*, 2025 WL 3171163, at *1.

Second, HCSC's generalized allegations about how OON health care reimbursement worked prior to Congress's enactment of the NSA are not relevant to the elements of HCSC's counts and could prejudice Zotec. FAC ¶¶ 25–29. Therefore, these allegations should be stricken as both immaterial and scandalous. *Unnikrishnan*, 2025 WL 2107683, at *2.

Third, HCSC's generalized allegations about how IDR works generally do not go to the elements of HCSC's counts and should be stricken as immaterial. FAC ¶¶ 3, 35–48, 70–73, 76; *see Paris Emergency Ctr.*, 2025 WL 3171163, at *1.

Fourth, HCSC's policy disagreements should be stricken because they are not actionable. FAC ¶¶ 3, 9–12, 50–51, 65–68, 70–77, 137–38, 144–45, 149–51, 171–73, 175, 178, 203; *see Paris Emergency Ctr.*, 2025 WL 3171163, at *1; *Unnikrishnan*, 2025 WL 2107683, at *2. Neither Zotec nor third parties, from Members of Congress to Departmental regulators to the IDREs themselves, should be subjected to discovery concerning HCSC's policy hang-ups. *See* Fed. R. Civ. P. 1.

Fifth, HCSC's generalized allegations about statistics across the entire universe of IDRs to date should be stricken as immaterial because they are irrelevant to all of the elements of the state-law cause of action asserted. FAC ¶¶ 3, 49–57; *Paris Emergency Ctr.*, 2025 WL 3171163, at *1.

Sixth, HCSC's generalized allegations about whether IDR under the NSA has performed as Congress intended simply has no bearing on whether Zotec defrauded or negligently

misrepresented eligibility facts to HCSC or the IDREs. FAC ¶¶ 3, 29, 49–55, 135–38; *see Paris Emergency Ctr.*, 2025 WL 3171163, at *1.

Seventh, HCSC's generalized allegations about IDR proceedings involving providers' third-party billing and revenue-cycle-management consultants that are not parties to this lawsuit should be stricken as immaterial and scandalous because Zotec is not and cannot be held responsible for what its peers in the marketplace do or fail to do, and permitting HCSC to paint with a broad brush risks unfairly prejudicing Zotec here. FAC ¶¶ 56–57, 64–77, 149; *see Paris Emergency Ctr.*, 2025 WL 3171163, at *1; *Unnikrishnan*, 2025 WL 2107683, at *2.

Eighth, HCSC's allegations about what Zotec's customers have alleged in purported disputes with Zotec should be stricken as immaterial and scandalous. FAC ¶¶ 5, 59–61. Even if those allegations underlying HCSC's allegations were true (they are not), they have no bearing on this case and appear to have been pled for no other reason than to try to harass. *See Paris Emergency Ctr.*, 2025 WL 3171163, at *1; *Unnikrishnan*, 2025 WL 2107683, at *2.

Ninth, HCSC's allegation concerning the identity of Zotec's founder—who is not a party—should be stricken as immaterial and scandalous, as HCSC does not attempt to pierce the veil and once again appears to try to harass Zotec. FAC ¶ 58; *see Paris Emergency Ctr.*, 2025 WL 3171163, at *1; *Unnikrishnan*, 2025 WL 2107683, at *2.

Tenth, HCSC's several generalized allegations, "upon information and belief," about Zotec's participation in IDR in general should be stricken as immaterial and scandalous. FAC ¶¶ 9–11, 49–57, 64–77, 149, 152–69; *see Paris Emergency Ctr.*, 2025 WL 3171163, at *1; *Unnikrishnan*, 2025 WL 2107683, at *2.

Eleventh, HCSC's inflammatory buzzwords should be stricken as immaterial and scandalous. FAC ¶¶ 10, 20, 53, 62, 64, 69, 72, 134, 138, 144–45, 164, 172, 178, 183, 191. The

elements of fraud, negligent misrepresentation, fraudulent inducement, and money had and received are well-defined. None of them include a "scheme"; "manipulation," "abuse," or "exploitation" of a federal statutory and regulatory regime out of "animus" to take advantage of "perverse incentives"; "stockpiling" reimbursement claims to later "cram" them through that regime to "overwhelm" HCSC or the IDREs and obtain an "exorbitant" "windfall." *See Paris Emergency Ctr.*, 2025 WL 3171163, at *1; *Unnikrishnan*, 2025 WL 2107683, at *2.

Twelfth, and finally, HCSC's specific allegations concerning the personal opinions of one of Zotec's executives, Ed Gaines, should be stricken. FAC ¶¶ 6, 62–63, 68. HCSC cites a slide presentation allegedly given by Mr. Gaines and attempts to attribute his remarks to Zotec. *See id.* ¶¶ 9 n.4, 12 n.5. On its face, Mr. Gaines gave this presentation at a conference of the American College of Emergency Physicians ("ACEP"); disclosed that he is an officer of Zotec and the chair of an ACEP committee; and then disclaimed that he was speaking on Zotec's behalf. *See* ED GAINES, JD, CCP, NO SURPRISES ACT: THE LAST ACT OR MORE TO COME? at 4, https://perma.cc/NT59-CNYS. Mr. Gaines' alleged remarks are not attributable to Zotec. *See, e.g.*, *Humble Nat. Bank v. DCV, Inc.*, 933 S.W.2d 224, 238 (Tex. Ct. App. 1996). Mr. Gaines' statements are wholly immaterial. *See Paris Emergency Ctr.*, 2025 WL 3171163, at *1.

VI. CONCLUSION

WHEREFORE, the Court should grant this Motion and dismiss the FAC in its entirety. In the alternative only, the Court should order HCSC to replead and provide a more definite statement and partially strike the FAC irrespective of whether it also orders HCSC to replead.

Dated: March 17, 2026.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following by email, operation of the Court's CM/ECF system, and/or U.S. Mail:

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Dated the 17th day of March 2026.

/s/ Joshua D. Arters

Exhibit A

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CHAIRMAN

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RICHARD E. NEAL
MASSACHUSETTS,
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U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

September 5, 2025

The Honorable Robert F. Kennedy, Jr.
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20515

The Honorable Scott Bessent
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Lori Chavez-DeRemer
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Secretary Kennedy, Secretary Bessent, and Secretary Chavez-DeRemer,

We write to express support for the *No Surprises Act* (NSA) as passed by Congress and encourage your Departments to implement the law in alignment with clear congressional intent. Doing so would be to the benefit of patients, providers, and payers by ensuring a balanced process that preserves access to care, protects patients from surprise medical bills, and controls costs.

The NSA, signed into law by President Trump in December 2020, fostered important patient protections against surprise medical bills while also improving health care transparency and empowering patients to better understand their coverage and costs. Despite clear congressional intent, the previous administration was unable to fully implement the NSA as intended and unfortunately challenges still persist today. Accordingly, the House Committee on Ways & Means (the Committee) has conducted consistent oversight – holding multiple hearings, corresponding with the Departments of Health and Human Services, Labor, and Treasury (the Departments), and developing recommendations for improving the law's implementation.

The Committee is the first and only congressional committee to hold hearings examining challenges cited by patients and other stakeholders regarding the NSA's implementation. On May 16, 2023, the Committee held a hearing, titled "Health Care Price Transparency: A Patient's Right to Know," at which Members of the Committee highlighted concerns that patients still did not have access to advanced explanations of benefits (AEOBs), a key price transparency feature required by the NSA.[1] Then, on September 19, 2023, the Committee held a hearing, titled "Reduced Care for Patients: Fallout From Flawed Implementation of Surprise Medical Billing Protections", where Members of the Committee raised multiple bipartisan concerns, including a lack of timely payment following the Independent Dispute Resolution (IDR) process.[2]

In October 2023, the Committee hosted a bipartisan roundtable with Biden Administration officials to discuss dissatisfaction with NSA implementation, notably that rules proliferated by the Departments had been found to be non-compliant with the statute by federal courts.[3] Members of the Committee expressed concern that the rules surrounding claim eligibility and batching created an inefficient IDR process, and that the calculation of and weight prescribed to the Qualified Payment Amount (QPA) – a critical figure used to determine IDR outcomes – was inconsistent and unbalanced. Additionally, in November 2023, Republican Members of the Committee sent a letter to Department Secretaries reiterating support for the law's intent and offering suggestions for the regulatory actions that would have the most meaningful impact on achieving patient protections.[4]

Nearly five years after the NSA's passage, and spanning multiple administrations, many of these identified challenges remain unresolved. Notably, landmark requirements for upfront and advanced price disclosure *before* scheduled medical procedures, the AEOB, remains entirely unimplemented. As this Administration prioritizes health care price transparency, we reiterate the importance of patient access to comprehensive price information for specific medical services.[5] Alarmingly, a 2024 survey of emergency physicians indicated that 24 percent of settled disputes were not paid or were paid an incorrect amount within the 30-day post-IDR payment timeline.[6] We are concerned that these payment delays continue and again request further guidance that prioritizes enforcement.

Similarly, uncertainty surrounding QPA calculations have been exacerbated by inconsistent regulatory actions and multiple court decisions ruling against the Departments and their

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[1] https://waysandmeans.house.gov/2023/05/17/six-key-moments-from-ways-and-means-committee-hearing-on-health-care-price-transparency/

[2] https://waysandmeans.house.gov/2023/09/21/top-five-moments-from-ways-and-means-hearing-on-flawed-implementation-of-the-no-surprises-act/

[3] https://waysandmeans.house.gov/2023/10/18/ways-and-means-committee-holds-roundtable-with-biden-admin-officials-on-failed-implementation-of-medical-surprise-billing-protections/

[4] https://waysandmeans.house.gov/2023/11/08/ways-and-means-republicans-demand-biden-administration-follow-the-law-to-end-surprise-medical-billing/

[5] https://www.whitehouse.gov/presidential-actions/2025/02/making-america-healthy-again-by-empowering-patients-with-clear-accurate-and-actionable-healthcare-pricing-information/

[6] https://edpma.org/wp-content/uploads/2021/02/EDPMA-NSA-Implementation-and-Compliance-Data-Analysis-April-2024-1.pdf.

rulemaking and guidance. We request the Departments finalize clear and consistent QPA calculation methodology, accelerate enforcement of updated QPA calculations, and release the statutorily mandated QPA audits to ensure transparency and accountability. Furthermore, the IDR Operations Rule, intended to correct claim eligibility and batching issues highlighted by the Committee, has still not been finalized despite being first proposed in October 2023.[7] We appreciate the Departments' acknowledgment for needed improvement and stress the need for an expedited final rule to ensure an efficient IDR process for all stakeholders.

The Committee will continue working to advance patient care, and we appreciate your Departments' attention to improving the NSA for the millions of Americans benefiting from surprise medical bill protections. We are encouraged by Secretary Kennedy's commitment to improving the NSA,[8] including the recent certification of two additional IDR entities to reduce the unresolved disputes backlog.[9] We look to this Administration to continue building on the work done by the Committee to prioritize necessary regulatory and sub-regulatory improvements so patients can realize the full potential and benefits of the NSA.

Sincerely,

Jason Smith
Chairman
Committee on Ways and Means

Vern Buchanan
Chairman, Subcommittee on Health
Committee on Ways and Means

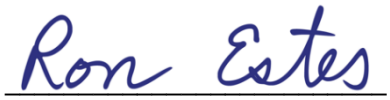
Adrian Smith
Member of Congress

Mike Kelly
Member of Congress

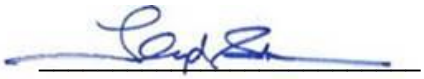
Darin LaHood
Member of Congress

Jodey Arrington
Member of Congress

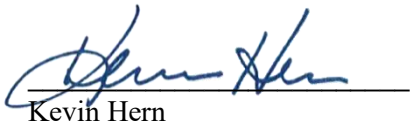
[7] https://www.cms.gov/newsroom/fact-sheets/no-surprises-act-independent-dispute-resolution-process-proposed-rule-fact-sheet
[8] https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_robert_f_kennedy_jrpart2.pdf
[9] https://www.cms.gov/nosurprises/notices



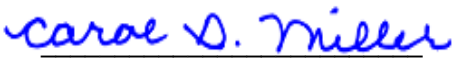
Ron Estes
Member of Congress



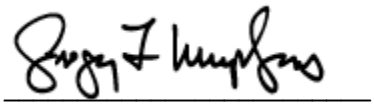
Lloyd Smucker
Member of Congress



Kevin Hern
Member of Congress



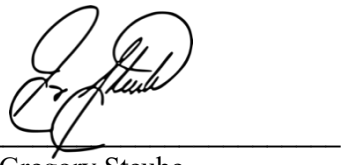
Carol D. Miller
Member of Congress



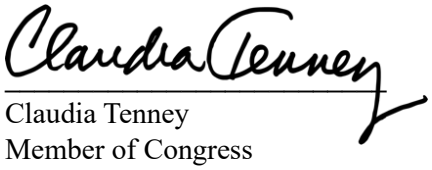
Gregory F. Murphy, M.D.
Member of Congress

David Kustoff
Member of Congress

Brian K. Fitzpatrick
Member of Congress

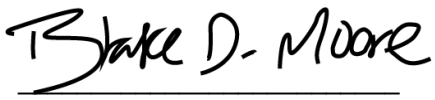


W. Gregory Steube
Member of Congress



Claudia Tenney
Member of Congress

Michelle Fischbach
Member of Congress



Blake D. Moore
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Beth Van Duyne
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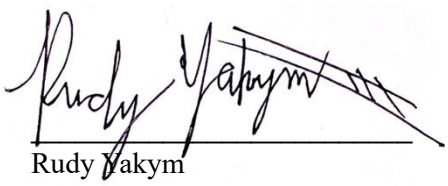
Randy Feenstra
Member of Congress

Nicole Malliotakis
Member of Congress

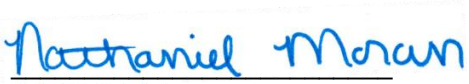
Mike Carey
Member of Congress



Rudy Yakym
Member of Congress

Max Miller
Member of Congress

Aaron Bean
Member of Congress



Nathaniel Moran
Member of Congress

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

HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,	)	
Plaintiff,	)	
v.	)	**Case No. 5:25-cv-00186-RWS**
ZOTEC PARTNERS, LLC,	)	**Judge Robert W. Schroeder III**
Defendant.	)	

[PROPOSED] ORDER GRANTING IN PART DEFENDANT ZOTEC PARTNERS, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, FOR MORE DEFINITE STATEMENT AND TO PARTIALLY STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT

Before the Court is Defendant Zotec Partners, LLC's ("Zotec") Motion to Dismiss Plaintiff's First Amended Complaint or, in the Alternative, for More Definite Statement and to Partially Strike Plaintiff's First Amended Complaint, filed March 9, 2026. Based upon the parties' submissions and the oral arguments of counsel, the Court finds the Motion well-taken. Accordingly, Zotec's Motion to Dismiss is **GRANTED**, and its Motions for More Definite Statement and to Partially Strike Plaintiff's First Amended Complaint are **DENIED AS MOOT**. The First Amended Complaint filed by Plaintiff Health Care Service Corporation, A Mutual Legal Reserve Company, is hereby **DISMISSED WITH PREJUDICE**. The Court will enter a separate final judgment on the docket at a later time.

IT IS SO ORDERED, this ___ day of _____ 2026.