UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY, *Plaintiff*, vs. ZOTEC PARTNERS, LLC, *Defendant.*	Case No. 5:25-cv-00186-RWS

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR MORE DEFINITE STATEMENT AND TO PARTIALLY STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT

Oral argument requested pursuant to L.R. CV-7(g)

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INTRODUCTION

In response to predatory balance billing by out-of-network providers, Congress enacted the No Surprises Act ("NSA"), which prohibits such billing for certain services and establishes an Independent Dispute Resolution ("IDR") Process to determine appropriate out-of-network reimbursement rates. But the NSA is limited in scope—only certain services and items qualify for the IDR Process. This case arises from Defendant Zotec Partners, LLC's ("Zotec") systematic abuse of that process. Zotec has initiated tens of thousands of IDR disputes for services and items that it knows are ineligible for the IDR Process, relying on misrepresentations and aggressive "batching" tactics designed to obscure its improper submissions. As a result, Plaintiff Health Care Service Corporation ("HCSC") has been forced to pay awards, fees, and settlements tied to ineligible claims. HCSC also has incurred substantial additional harm including administrative costs incurred responding to Zotec's ongoing scheme.

Now, in an effort to escape accountability and discovery at all costs, Zotec advances a scattershot set of arguments. None have merit. HCSC's First Amended Complaint ("FAC") details the fraudulent scheme, its execution, representative examples, and the resulting harm. Because Zotec's arguments fail as a matter of law, the Court should deny its motion in full.

BACKGROUND

I. The Federal No Surprises Act and its Independent Dispute Resolution Process.

Prior to federal and state legislation, patients could get surprise "balance bills" from providers when they unwittingly received care from an out-of-network healthcare provider. D.E. 21 ("FAC") ¶¶ 26–28. To protect patients from these billing practices, Congress passed the NSA in 2020 to shield patients from unexpected out-of-network bills. *Id.* ¶¶ 29–31. The NSA established an IDR Process—overseen by the Departments of Health and Human Services, Labor,

and Treasury (collectively, the "Departments")—for determining reimbursement rates (e.g., payment amounts) for services or items rendered by out-of-network medical providers. *Id.* ¶ 31.

The IDR Process imposes strict eligibility requirements. *Id.* ¶ 32. Only services or items rendered by out-of-network providers in connection with emergency services, non-emergency services at participating facilities, or air ambulance services may be subject to the IDR Process. *Id.* ¶ 32(b) (citing 42 U.S.C. § 300gg-111(c)(1)(B)). The IDR Process is unavailable where a "specified state law" governs the dispute based on the applicable health benefits plan. *Id.* ¶ 32(a) (citing § 300gg-111(a)(3)(I)). Prior to initiating the IDR process, a party must engage in a 30-day open negotiation period, within 30 days of the health plan's first notice of payment or denial for the item or service. *Id.* ¶ 32(d) (citing § 300gg-111(c)(1)(A)–(B)). The provider then has four days after exhaustion of the open negotiation period to initiate the formal IDR Process. *Id*.

Once a health plan receives notice of a formal IDR dispute initiation, the plan has only four business days to object that the items or services in dispute are not eligible, regardless of how many hundreds or thousands of items or services were submitted. *Id*. ¶ 33(e). To prevent the filing of ineligible disputes, providers are required to provide information and attest that the service or item at issue meets eligibility requirements. *Id*. ¶ 35. The system functionally operates under an "honor system" through an online portal created by the Departments whereby the provider inputs various information regarding the services or items at issue—including the health benefits plan type, name of the plan issuer or carrier, and date the open negotiations period commenced. *Id*. ¶¶ 37–47. Further, a provider is required to sign and date an "**ATTESTATION**" that the "item(s) and/or service(s) at issue are qualified item(s) and/or services(s) within the scope of the Federal IDR process." *Id.* ¶ 47. A provider cannot initiate the IDR process if its submission shows the service is ineligible or lacks the required attestation. *Id.* ¶¶ 41, 48.

While health plans are allowed to contest eligibility, there is nothing in the NSA that requires the IDRE to consider any eligibility objections made by the health plan. *Id.* ¶ 33(g). In fact, in deciding eligibility, the IDRE is only required to "review the information submitted in the notice of IDR initiation" by the provider. 45 C.F.R. § 149.510(c)(1)(v).

Once a formal IDR Process is initiated, the provider and health plan each submit an offer to the IDRE. *Id*. ¶ 33(h) (citing 42 U.S.C. § 300gg-111(c)(5)(B)). The parties are not entitled to see, nor rebut, each other's submissions to the IDRE—the submissions are entirely confidential in that sense. *Id*. The IDRE is then only responsible for two tasks—first, selecting one of the offers submitted by the parties and, second, notifying the parties of that selection. *Id*. ¶ 31(i) (citing 42 U.S.C. § 300gg-111(c)(5)(C)). Notably, the IDRE is statutorily limited in what it can consider when making a "payment determination"—when deciding between the two offers—to certain enumerated factors including the "qualifying payment amount" ("QPA"), which is the health benefit plan's median in-network rate for the same service, and other enumerated factors. *Id*.; 42 U.S.C. § 300gg-111(c)(5)(C).

There is no discovery in the IDR Process, the IDRE does not have the ability to compel witness testimony, there is no ability to cross-examine witnesses (again, the submissions are confidential to start with), and the IDRE does not even have the ability to engage in the fact-finding process. *See generally* 42 U.S.C. § 300gg-111.

The IDR Process is costly. FAC ¶ 34. The IDREs charge administrative fees, which are the responsibility of the party that loses the dispute and that often exceed the value of the underlying reimbursement dispute. *Id*. (citing 42 U.S.C. § 300gg-111(c)(5)(F)(i)). And importantly, IDREs also only receive these fees if they find a dispute eligible for the IDR process and then make a final payment determination. *Id*. ¶ 33(f) n.11.

II. Misuse and Abuse of the IDR Process.

In passing the NSA, Congress expected that most items and services submitted to the IDR Process would be paid at or around the QPA amount. *Id.* ¶ 3. That has not proven to be the case—the median awarded rate in the IDR Process is now more than ***four times greater*** than the QPA. *Id.* ¶ 53. As a result, the IDR Process is "generating billions of dollars in extra costs for the healthcare system" without delivering more or better services to patients. *Id.* ¶ 54.

III. Zotec's Unscrupulous Billing Practices and Animus Against Health Plans.

Zotec describes itself as a revenue cycle and practice management company for healthcare providers and acts as their authorized agent to submit items and services to the IDR process on behalf of providers. *Id.* ¶¶ 58, 70–71. Zotec's billing practices have been the subject of scrutiny before, including through legal actions brought by its own provider clients. *Id.* ¶¶ 59, 61. Zotec also has a long-held animus against health plans and, in particular, Blue Cross Blue Shield of Texas ("BCBSTX"), a division of HCSC. *Id.* ¶ 6. For example, Zotec's Vice President of Regulatory Affairs & Industry Liaison has referred to Blue Cross Blue Shield as "one of the poster children for 'bad payor' behavior" and specifically called BCBSTX "1 of the worst." *Id.* ¶¶ 6, 63.

IV. Zotec's Scheme to Abuse the IDR Process.

When the NSA was enacted, Zotec identified an opportunity to game the new system to generate additional revenue for itself and its provider clients. *Id.* ¶¶ 7, 64. Zotec's strategy was simple: manipulate the system's safeguards and overwhelm the IDR Process with ***ineligible*** items and services—often in ways calculated to increase administrative review time and cost—and profit from the resulting improper awards. *Id.* ¶ 7.

Zotec's scheme works as follows. First, Zotec establishes relationships with out-of-network providers who authorize Zotec to initiate out-of-network payment disputes related to their services, including through the IDR Process. *Id.* ¶¶ 70–71. Zotec does this work in exchange for receiving

a portion of the payments received. *Id.* ¶ 212. To maximize its revenue, Zotec then initiates open negotiations periods for services and items that are ***ineligible*** for the IDR Process against payors including HCSC. *Id.* ¶ 73. HCSC often informs Zotec that the underlying item or service is ineligible for the IDR Process through letters. *Id.* ¶ 75. Nevertheless, Zotec proceeds and initiates formal IDR Processes. *Id.* ¶ 76. In doing so, Zotec makes misrepresentations to HCSC, IDREs, and the Departments to make the items and services appear eligible for IDR even when Zotec knows they are not. *Id.* ¶¶ 76–77. Examples of Zotec's misrepresentations include:

- Misrepresenting the type of plan at issue, including by stating that it had received "No Plan/Issuer Response" when, in reality, HCSC had informed Zotec multiple times that the plan was fully insured and a state-specified law applied. (*id.* ¶¶ 81–92);
- Misrepresenting the date that an open negotiations period commenced to make items or services appear as timely even though Zotec knows they are not (*id.* ¶¶ 93–106);
- Misrepresenting that the parties had completed an open negotiations period when, in reality, Zotec knows they had not (*id.* ¶¶ 107–19); and,
- Misrepresenting that a service was eligible for the IDR Process when Zotec had already initiated a duplicate IDR Process for the same service—allowing Zotec to procure duplicate ***awards for the same service*** (*id.* ¶¶ 120–32).

Zotec also employs other means to improperly tilt the scales in its favor. For instance, Zotec touts that it uses "strategic planning for batching to maximize revenue gain"—referring to the practice of stockpiling numerous services and items for a certain health plan so it can initiate large numbers of open negotiations and IDR initiations all at once. *Id.* ¶¶ 68, 145–53. ***On over 530 occasions, Zotec has initiated HCSC-related IDR Processes that each contain more than 100 different batched items and services***. *Id.* ¶ 152. This strategy is designed to (1) limit HCSC's time to respond to and contest the eligibility of certain IDRs and (2) to overwhelm IDREs' ability to assess eligibility. *Id.* ¶ 145. Zotec also tries to "build relationships w[ith] the IDREs. *Id.* ¶ 68.

As a result of Zotec's scheme, Zotec obtains awards against HCSC—typically at amounts significantly higher than the QPA—on ineligible items and services. *Id.* ¶¶ 77, 137. In certain instances, these awards are even higher than the ***provider's own billed charges***. *Id.* ¶¶ 134–44.

V. Zotec Refuses to Cease Its Fraudulent Practices.

In addition to notifying Zotec during individual IDR Processes of its ineligible submissions, on May 12, 2025, HCSC sent Zotec a letter describing Zotec's abuse of the NSA by routinely submitting large quantities of ineligible disputes, explaining "these improper submissions have harmed HCSC and other group health plans by, among other things, causing them to incur nonrefundable administrative and/or IDRE fees." *Id.* ¶¶ 154–55. Zotec responded, asking HCSC to provide "examples of what you are talking about." *Id.* ¶ 156. HCSC did so, including providing information on how to determine eligibility, along with an offer to schedule a virtual meeting to answer additional questions. *Id.* ¶¶ 157–58. Zotec never responded to this message or otherwise followed up—yet Zotec continues its practices of submitting ineligible services and items into the IDR Process. *Id.* ¶¶ 159–60.

All told, Zotec has wrongly procured tens of thousands of awards against HCSC in IDR proceedings for ineligible items and services. *Id.* ¶ 13. In addition, Zotec's improper submissions have caused HCSC to incur substantial IDR administrative fees. *Id.* And, on top of this, HCSC faces additional administrative and staffing expenses necessary to respond to the ineligible submissions, all of which continue to accrue due to Zotec's continued improper submissions. *Id.*

LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "[T]he court must accept the factual allegations of the complaint as true, view them in a light most favorable to the

plaintiff, and draw all reasonable inferences in favor of the plaintiff." *Miles v. Port Arthur ISD*, 772 F. Supp. 3d 770, 779 (E.D. Tex. 2025).

ARGUMENT

I. HCSC's Remedy for Its Asserted Claims Lies in this Court.

Zotec cannot avoid judicial review for its fraud. HCSC seeks damages in this case that HCSC cannot recover via any other means, including for harm separate and apart from the final IDR payment determination amounts. For that reason alone, the collateral attack doctrine does not apply. Indeed, taken to its logical conclusion, Zotec's collateral attack argument would render Zotec completely immune from suit, despite knowingly submitting thousands of intentional misrepresentations to HCSC, IDREs and the Departments. But there is nothing in the NSA, nor elsewhere in the law, that prevents this Court from adjudicating HCSC's present claims.

A. The Collateral Attack Doctrine is Inapplicable to HCSC's Claims.

Zotec's collateral attack argument fails for at least three reasons. *First*, the collateral attack doctrine only applies to litigation or arbitration—and the IDR Process is fundamentally different than arbitration. Zotec does not and cannot point to any instances of the collateral attack doctrine being applied outside the context of court and arbitral awards. *See Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 750 (5th Cir. 2008) (applying the collateral attack doctrine to an international arbitration); *Texas Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 487 (5th Cir. 2020) (discussing "collateral attacks on the arbitration award"); *Allen Cohrs/Allen Cohrs Farms v. Agrilogic Ins. Servs., LLC*, No. M-23-218, 2024 WL 2989735, at *3 (S.D. Tex. May 8, 2024) (discussing "review of the arbitrator's Final Award").

That the collateral attack doctrine is limited to arbitration decisions is fatal to Zotec's arguments because "differences pervade the IDR and arbitration processes" and the "NSA is not an arbitration." *Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087, 2025 WL

3063648, at *5–7 (D.N.J. Nov. 3, 2025); *Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n*, No. 25-CV-1255, 2025 WL 3496382, at *5 (S.D.N.Y. Dec. 5, 2025) (same). While arbitration is voluntary, pursuant to mutual agreement, and permits parties to define the scope of the proceedings, the NSA is mandated by statute and operates within a tightly prescribed regulatory framework. *Seshan*, 2025 WL 3496382 at *5. Arbitration also provides procedural safeguards such as discovery, motion practice, evidentiary submissions, briefing, and oral arguments and hearings. *Id.* In contrast, the IDR Process allows limited submissions with no discovery, live testimony, or opportunity for rebutting the opposing party's submissions. *Id.* Nor does the IDR Process afford the procedural formality or breadth of review characteristic of arbitration or litigation. *Id*. at *5–6. Because the NSA is not an arbitration, the collateral attack doctrine does not apply.

Second, even if the collateral attack doctrine was applicable to IDR awards, it does not serve as a bar here because HCSC seeks damages independent of the IDR awards themselves. The Fifth Circuit authority that Zotec relies upon—*Gulf Petro*—makes clear the collateral attack doctrine does ***not*** apply if the conduct at issue has caused harm "independent of its effect on the arbitration award." 512 F.3d at 749–51 & n.3, 5. Indeed, *Gulf Petro* itself provides two separate examples of the types of claims that would not be subject to the collateral attack doctrine, even if the damages at issue include arbitration award amounts. First, *Gulf Petro* cites to the Second Circuit's decision in *Mian v. Donaldson*, 7 F.3d 1085 (2d Cir. 1993). *Id.* at 749 n.3. There, a plaintiff filed suit alleging that the "defendants impermissibly discriminated against him because of his race during the course of an arbitration proceeding." *Mian*, 7 F.3d at 1086. Despite the fact that "a major component of the damages sought would consist of the amount of the arbitration award," the Second Circuit permitted the plaintiff's suit to proceed. *Id*. at 1087. That's because the

discrimination the plaintiff alleged resulted in "harm independent of the arbitration award and therefore could not be construed as a collateral attack." *Gulf Petro*, 512 F.3d 751 n.5.

Next, *Gulf Petro* acknowledges potentially permissible RICO claims, again premised on the claims also seeking damages for harm independent of the arbitration award:

> To take Gulf Petro's example of a hypothetical RICO lawsuit relating to "irregularities arising from conduct relating to arbitration," it seems likely that if the link between the conduct complained of and the arbitration was indeed so attenuated that the wrongdoing could truly be characterized as only "arising from conduct relating to arbitration," then at least some of the resulting claims would be based on harm independent of the arbitration award and therefore could not be construed as a collateral attack.

Id. (emphasis added).

That is precisely the case here, where HCSC seeks damages independent of the fraudulent IDR awards and related fees that Zotec caused. Specifically, HCSC's FAC alleges that it has incurred and continues to incur administrative and staffing expenses necessary to respond to the tens of thousands of improper IDR submissions from Zotec—costs HCSC incurred even when HCSC won the IDR. FAC ¶ 13. In addition, HCSC has pled that Zotec's misrepresentations caused HCSC to unnecessarily come to settlement agreements with Zotec on certain ineligible claims submitted into the IDR Process. *Id*. ¶¶ 206, 211. Both these additional overhead costs and the settlement agreements are categories of damages that were neither recoverable in the IDR Process, nor the result of any IDR award. Because HCSC seeks damages for "harm independent of its effect on the arbitration award" (*Gulf Petro*, 512 F.3d at 751), the collateral attack doctrine is inapplicable—even if HCSC also seeks damages that include the fraudulently obtained payment determination amounts. *Mian*, 7 F.3d at 1087.

Third, and finally, HCSC's claims seek forward-looking injunctive relief, which cannot possibly "collaterally attack" IDRs that have not yet been commenced. Specifically, HCSC seeks "an injunction prohibiting Defendants from continuing to submit false attestations and initiate IDR

Processes for items or services that are not eligible for IDR." FAC ¶ 216. There is no possible way that HCSC's claims can collaterally attack IDRs that have not yet been initiated.

B. The NSA's Judicial Review Provision Does Not Apply to HCSC's Claims.

Zotec next tries to insulate itself from suit by contending that "IDR determinations are insulated from judicial review except through the FAA vacatur valve Congress incorporated" into the NSA. D.E. 28 at 11. But under the plain language of the statute, only judicial review of IDRE ***payment*** determinations is limited under the NSA, not ***eligibility*** decisions or IDR submission practices. 42 U.S.C. § 300gg-111(c)(5)(E). Accordingly, the judicial review provision—and its incorporated Federal Arbitration Act standards—do not apply to HCSC's claims which relate to Zotec's fraudulent submission of tens of thousands of ***ineligible*** disputes.

To that end, there is a "well-settled" and "strong presumption" that "favor[s] judicial review." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (cleaned up). A litigant "attempting to show that Congress 'prohibit[ed] all judicial review . . . bears a 'heavy burden.'" *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015) (citation omitted). This burden of foreclosing judicial review can be met only by "clear and convincing evidence." *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 64 (1993). Indeed, "where substantial doubt about the congressional intent exists, the general presumption favoring judicial review of administrative action is controlling." *Texas v. United States*, 809 F.3d 134, 164 (5th Cir. 2015) (citation omitted).

There is no indication—let alone a "clear and convincing" one—that Congress intended to foreclose judicial review of Zotec's eligibility scheme in the IDR Process. The NSA provision central to Zotec's argument reads that "[a] determination of a certified IDR entity ***under subparagraph (A)*** . . . shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9." 42 U.S.C. § 300gg-111(c)(5)(E) (emphasis

added). The only determination made in subparagraph (A) by the IDRE is "the amount of payment." *Id.* § 300gg-111(c)(5)(A).

In fact, the title of subparagraph (c)(5)—the provision that the judicial review provision at issue resides under—is "Payment Determination." This "discrete" enumeration must be interpreted "narrow[ly]." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83, 487 (1999). Had Congress intended to limit judicial review on all decisions made by an IDRE, including eligibility decisions as Defendants contend, it could easily have said so. But instead, Congress only barred review for a "determination . . . under subparagraph (A)," which is consistent with the overall purpose of the NSA to address disputes over amounts owed for out-of-network care, applies exclusively to "payment determinations."

Zotec's argument is also inconsistent with how eligibility is treated in traditional arbitration. Although the IDR Process differs in important respects from arbitration, both systems draw a distinction between threshold eligibility questions and merits determinations. In traditional arbitration, Article III courts routinely decide whether a dispute is arbitrable – *i.e.*, whether the dispute is eligible for arbitration. *See AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 647 (1986) ("[T]he 'general rule' [is] that the issue of arbitrability is for the courts to decide unless the parties stipulate otherwise."). Here too, the NSA expressly limits judicial review of payment determinations, while leaving eligibility determinations subject to judicial oversight. Zotec's reliance on arbitration precedent to argue for insulation from judicial review is therefore misguided, as that precedent assigns questions of arbitrability—and thus eligibility—to the courts.

With no help in the specific language of the NSA, Zotec instead turns to case law. But *Guardian Flight I* and *II*—relied on by Zotec—are inapposite because they both specifically involve challenges related to the final payment determination, not eligibility. In *Guardian Flight*

I, two air ambulance providers sued a health plan for failing to timely pay final IDR awards. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 273 (5th Cir. 2025). Because the plaintiffs in that case were seeking to enforce a final award, it is unsurprising that the *Guardian Flight I* court did not address eligibility determinations.

Guardian Flight II concerned allegations by an emergency air-ambulance provider against a health benefits plan regarding the calculation of the health benefit plan's QPA (*e.g.*, "the median of the contracted rates recognized by the plan or issuer") as part of the IDRE's application of the factors for "consideration" under Section 300gg-111(c)(5)(C). *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 618–20 (5th Cir. 2025). Thus, because the provider's claims related solely to a final payment determination, the claims were squarely within the confines of Subparagraph A and its judicial review provisions. *Id*. at 620–22.

Here, in contrast, HCSC challenges Zotec's pattern of initiating IDR Processes for ineligible services and items. HCSC does not challenge the application of the factors that must be considered as part of reaching a final payment determination. For example, HCSC does not challenge the QPA's impact on the payment determination.[1] Instead, HCSC seeks relief for an overall scheme, orchestrated by Zotec, based on knowingly submitting tens of ineligible items and services. Zotec's reliance upon both *Guardian Flight I* and *II* is unavailing. Judicial review remains available and proper for HCSC's asserted claims.

C. Injunctive Relief Claims Are Not Properly Addressed via Motion to Dismiss.

Zotec's final arguments are hard to discern but appear to relate to HCSC's request for injunctive relief. As explained in Section XII, HCSC is not seeking a general command to obey the law and has otherwise stated viable claims for injunctive relief. Moreover, the motion to

[1] For this same reason, contrary to Zotec's assertions, this Court will not have to make "dispute-by-dispute" payment determinations to resolve HCSC's claims.

dismiss stage is not the proper time to address Zotec's concern, as Rule 65 addresses injunctions issued after a case has proceeded through the fact-finding stages. And as to Zotec's contention that allowing HCSC's claims to proceed will "pull the Court" into thousands of eligibility disputes, that would only seem to be a concern if Zotec violates any injunction thousands of times.

II. HCSC Has Standing.

Despite the clear harm to HCSC plainly traceable to Zotec's actions, Zotec asserts that HCSC lacks standing. Zotec's arguments on traceability and redressability are without merit. To establish standing, a plaintiff must show (1) "an injury that is concrete, particularized, and actual or imminent"; (2) "fairly traceable to the defendant's challenged behavior"; and (3) "likely to be redressed by a favorable ruling." *Dep't of Com. v. New York*, 588 U.S. 752, 766 (2019). Traceability requires "a causal connection between the injury and the conduct complained of." *Est. of Parker v. Miss. Dep't of Pub. Safety*, 140 F.4th 226, 236 (5th Cir. 2025). The standard is not "stringent or inflexible" and "[e]ven an uncertain or indirect causal connection may suffice at the pleading stage." *Id.* at 236–37. In other words, standing presents a "low . . . bar" at the pleading stage. *Id.*

Zotec argues that because the IDREs made the ultimate decisions, there can be no traceability. Not so. Article III standing can be found where there is an "indirect causal relationship," where the defendant's conduct was just "one of multiple contributing causes," where the defendant was "only one of several persons who caused the harm," *id.* at 236–37, or where the defendant's actions are not "the very last step in the chain of causation," *Wieland v. U.S. Dep't of Health & Hum. Servs.*, 793 F.3d 949, 954 (8th Cir. 2015). The Supreme Court has also found traceability satisfied where a defendant's actions had a "predictable effect . . . on the decisions of third parties." *Dep't of Comm.*, 588 U.S. at 768. Indeed, in *Estate of Parker*, the Fifth Circuit affirmed Article III standing to pursue claims against one police officer where that officer's actions

caused a different officer to fire a bullet that struck the plaintiff and caused the injuries at issue. *Est. of Parker*, 140 F.4th at 237. That was enough for pleading purposes.

Here, HCSC has alleged as much and more. First, HCSC has alleged harm resulting from Zotec's scheme independent of the IDRE's actions, and thus not impacted by Zotec's traceability argument at all, including harm in the form of additional costs and overhead HCSC had to incur to respond to Zotec's scheme as a whole. FAC ¶¶ 13, 78. Beyond that, HCSC has also alleged that Zotec's misrepresentations and efforts to conceal its wrongdoing had the "predictable effect" of impacting the "decisions of [the IDREs]," precisely because the IDREs relied and took action based on those statements, including allowing the IDRs to proceed and issuing awards on ineligible services and claims. *Dep't of Comm.*, 588 U.S. at 768; FAC ¶¶ 33(g), 36–37, 165–71. HCSC has also alleged that had Zotec not made the misrepresentations at issue, the IDRs would not have proceeded, and none of the alleged harm would have occurred. *Id.* ¶¶ 170–71. These allegations, which must be accepted as true, suffice to support Article III traceability.

Moreover, the plausibility of HCSC's claims is supported by the fact that the regulations only require the IDREs to consider the initial "information submitted in the notice of IDR initiation"—that is, the provider's attestations—"to determine whether the Federal IDR process applies." 45 C.F.R. § 149.510(c)(1)(v). While Zotec attempts to frame the IDRE's determination as a "legal event[]" and one requiring "adjudicatory judgment," that is far from the truth. D.E. 28 at 14. Indeed, as laid out in the FAC, eligibility is not complicated, and so long as information is entered by the providers accurately, the online portal itself will largely weed out ineligible items or services. FAC ¶¶ 36–41. The portal, however, does not have mechanisms to verify a provider's representations—this is why an attestation is required. Then once a dispute makes its way to an IDRE, the IDRE is only required to consider the provider's Notice of IDR Initiation, which again

only includes the attestations submitted by the provider. *Id.* ¶¶ 33g, 37, 48. As alleged, the IDR Process's clear reliance on the information submitted by the providers is enough to clear the "low causation bar" that traceability presents at the pleading stage. *Est. of Parker*, 140 F.4th at 237.

Zotec's reliance on *Benchellal v. Okonite Co., Inc.*, No. 4:22-cv-4435, 2024 WL 1057475, at *4 (S.D. Tex. Mar. 11, 2024), is misplaced. There, the plaintiffs received a scam email from someone pretending to be the defendant. *Id.* The court concluded at summary judgment that the plaintiffs failed to establish that their injury was fairly traceable to the defendant because there was no "evidence demonstrating the email scam resulted from a 'hack' into [the defendant's] computer network" or that the defendant "left its computer network vulnerable to attack." *Id.* In contrast, here, Zotec engaged in conduct that had the "predictable effect" of impacting the "decisions of [the IDREs]." *Dep't of Comm.*, 588 U.S. at 768.

Zotec's redressability arguments similarly fail. To establish redressability, "a plaintiff must show that 'it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Inclusive Communities Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019) (citation and emphasis omitted). Zotec focuses on the merits of HCSC's requested relief, arguing that the Court is unlikely to grant the full relief requested. *See* D.E. 28 at 15–16. While of course HCSC disagrees with Zotec, the proper focus of the redressability inquiry is not whether the relief is likely to be granted; rather, the focus is whether, assuming that the requested relief is granted, that relief will likely redress the plaintiffs' injuries." *Hancock Cnty. Bd. of Sup'rs v. Ruhr*, 487 F. App'x 189, 197 (5th Cir. Aug. 31, 2012). Here, the Court plainly has the power to issue the monetary and injunctive relief requested, and Zotec does not even argue to the contrary.[2]

[2] Zotec makes reference to Rule 19 in its argument on redressability but merely cites to another portion of its brief as support. As such, HCSC addresses Rule 19 below, as well.

Moreover, HCSC need not prove, at the pleading stage, that the relief sought will "completely cure the injury," instead the question is only whether "the desired relief would lessen it." *Inclusive Communities Project, Inc.*, 946 F.3d at 655. A decision requiring Zotec to pay damages to HCSC for its unlawful scheme and prohibiting Zotec from continuing to systematically submit false attestations and misrepresentations would plainly "lessen" the injury to HCSC. For purposes of standing, at this stage, that is all that is required.

III. HCSC Is Not Collaterally Estopped From Asserting Its Claims.

The doctrine of collateral estoppel "prevents litigation of an issue when: (1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision." *Bradberry v. Jefferson Cnty.*, 732 F.3d 540, 548 (5th Cir. 2013). It is inapplicable here for several reasons.

First, "the Fifth Circuit has held that generally a res judicata [(or collateral estoppel)] contention cannot be brought in a motion to dismiss." *Casper v. West*, No. 4:23-cv-42, 2025 WL 539945, at *19 n.11 (E.D. Tex. Feb. 18, 2025) (citation omitted); *see Am. Realty Tr., Inc. v. Hamilton Lane Advisors, Inc.*, 115 F. App'x 662, 664 n.1 (5th Cir. 2004) ("*Res judicata* is an affirmative defense that should not be raised as part of a 12(b)(6) motion, but should instead be addressed at summary judgment or at trial."). Here, analyzing collateral estoppel at this stage is particularly inappropriate because the Court is unable to review any of the underlying IDR awards. *See, e.g.*, *T.L. Dallas (Special Risks), Ltd. v. Elton Porter Marine Ins. Agency*, No. 3:07-cv-0419, 2008 WL 7627806, at *5 (S.D. Tex. Dec. 22, 2008) (considering collateral estoppel on a motion to dismiss where "the record [was] already developed by the [state] court").

Second, HCSC did not have a full and fair opportunity to actually litigate these issues. "[T]he due process clause of the United States Constitution protects the right to a full and fair hearing on an issue, and therefore collateral estoppel cannot be applied against a party as to issues

not fully and fairly litigated." *Universal Am. Barge Corp. v. J-Chem, Inc.*, 946 F.2d 1131, 1136 (5th Cir. 1991); *see also Ivery v. United States*, 686 F.2d 410, 413 (6th Cir. 1982) (collateral estoppel does not apply if the "procedures followed suggest that the arbitration process was unfair and the decision unreliable"); *Bravo-Fernandez v. United States*, 580 U.S. 5, 10 (2016) (preclusion requires "confidence that the result achieved in the initial litigation was substantially correct" and "[i]n the absence of appellate review . . . such confidence is often unwarranted").

A full and fair opportunity to litigate "includes an 'opportunity to be heard'" and to present "evidence and arguments on the claim." *United States v. Planned Parenthood Fed'n of Am., Inc.*, No. 2:21-cv-022, 2022 WL 19006362, at *4 (N.D. Tex. Oct. 11, 2022). Here, as explained above, the IDREs are only required to consider the initial "information submitted in the notice of IDR initiation"—the provider's attestations—"to determine whether the Federal IDR process applies." 45 C.F.R. § 149.510(c)(1)(v). Although HCSC can submit objections, the IDRE is not required to consider them. Moreover, the IDR process lacks important additional due process protections. For instance, the IDR process does not allow for discovery, motion practice, briefing, evidentiary submissions, live testimony, cross examination, or even the opportunity to view and rebut the opposing party's submissions. In circumstances like these, where the prior proceeding was "tailored to the prompt, inexpensive determination of small claims," application of collateral estoppel is "wholly inappropriate to the determination of the same [or similar] issues when presented in the context of a much larger claim." Restatement (Second) Judgments § 28.

Third, HCSC's claims relate to different issues that were not, and could not have been, addressed in the IDR proceedings. While Zotec argues that eligibility was "actually litigated," there is no requirement that the IDRE actually consider HCSC's submissions, nor issue any sort of reasoned opinion on eligibility. FAC ¶ 33g. Moreover, HCSC alleges that Zotec has created a

scheme to defraud HCSC by knowingly and systematically submitting false attestations and misrepresentations for ineligible items and services. *Id.* ¶¶ 69–80. HCSC had no opportunity to raise these fraud claims in the individual IDR proceedings. Zotec has not explained how HCSC's claims are "identical" to the issues addressed in the IDR proceedings.

Fourth, Zotec argues that "[s]trong federal interests" warrant the application of collateral estoppel, D.E. 28 at 17, relying on case law indicating that "collateral estoppel may apply in federal-court litigation to facts found in arbitral proceedings as long as the court considers the 'federal interests warranting protection.'" D.E. 28 at 17 (citing *Grimes v. BNSF Ry. Co.*, 746 F.3d 184, 190 (5th Cir. 2014)). But Zotec takes this quote out of context. "[F]ederal interests warranting protection" include interests such as "the federal interests in insuring a federal court determination of the federal claim, the expertise of the arbitrator and his scope of authority under the arbitration agreement, and the procedural adequacy of the arbitration proceeding." *Greenblatt v. Drexel Burnham Lambert, Inc.*, 763 F.2d 1352, 1361 (11th Cir. 1985). These interests cannot override the elements of collateral estoppel. To the contrary, *Greenblatt* instead cautions that even if the elements of collateral estoppel are met, a court must still check for federal interests that might ***counsel against*** applying preclusion, like due process concerns. *Id.* Zotec's argument incorrectly reverses the analysis and should be rejected.

IV. Zotec Fails to Establish Required Joinder under Rule 19.

Zotec argues that this action cannot proceed because unnamed "clinicians" who allegedly hold rights under IDR awards are required parties and this action would abridge their "payment rights" to IDR awards. D.E. 28 at 17–20. However, ***at most***, that contention applies to only one subpart of a single asserted claim. Specifically, only the portion of HCSC's declaratory relief claim seeks to limit the enforceability of the fraudulently procured IDR awards at issue. FAC ¶ 216. The remainder of HCSC's claims seek damages ***from Zotec***, arising from Zotec's fraudulent

misconduct. *See, e.g.*, *id*. ¶¶ 179, 194, 209. Requiring Zotec to pay damages for the consequences of its own misconduct does not alter any clinician's rights under an IDR award. Nor does HCSC's request for prospective declaratory relief implicate any clinician interests. That aspect of the claim seeks only to prevent Zotec from continuing its unlawful scheme. *Id.* ¶ 216. Clinicians, of course, have no cognizable rights in IDR awards that have not yet been initiated or issued.

In any event, Zotec's argument fails. Rule 19's analysis proceeds in two steps. First, the Court asks whether a person must be joined under Rule 19(a). Second, only if joinder is required but infeasible does the Court ask whether the case should be dismissed under Rule 19(b). *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305, 1309 (5th Cir. 1986). Zotec bears the burden at both steps and must begin by actually identifying "[a] person . . . whose joinder will not deprive the court of subject-matter jurisdiction." Fed. R. Civ. P. 19(a)(1); *see Morgan v. Coushatta Tribe of Indians of La.*, 214 F.R.D. 202, 205 (E.D. Tex. 2001). Zotec fails to meet its burden.

Rule 19(a)(1)(A) is not satisfied. Rule 19(a)(1)(A) requires joinder only where "complete relief" cannot be accorded "among existing parties" in the absent party's absence. That standard "refers to relief as between the persons already parties, not as between a party and the absent person whose joinder is sought. It does not concern any subsequent relief via contribution or indemnification for which the absent party might later be responsible." *Niven v. E-Care Emergency McKinney, LP*, No. 4:14-CV-00494, 2015 WL 1951811, at *1 (E.D. Tex. Apr. 10, 2015) (cleaned up). HCSC seeks damages, declaratory relief, and injunctive relief for itself. No unnamed clinician's involvement is necessary for this Court to accord HCSC the relief it seeks. *Pulitzer-Polster*, 784 F.2d at 1309 (other shareholders not required parties where shareholder-plaintiff only sought "damages for herself"); *see also AJ Holdings of Metairie, LLC v. BJ's Jewelry & Loan,*

LLC, No. 21-cv-374, 2022 WL 278924, at *3 (E.D. La. Jan. 31, 2022) (applying *Pulitzer-Polster*'s "only for herself" rule to injunctive relief as well as damages).

No absent party has claimed an interest in this litigation. Rule 19(a)(1)(B) applies only where a person "claims an interest relating to the subject of the action." No clinician has sought to intervene, asserted rights, or otherwise signaled that its interests are at stake. That silence is meaningful. "[T]he fact that an absent party does not seek joinder by its own volition indicates that it lacks an interest relating to the subject matter of the action." *Union Pac. R.R. Co. v. City of Palestine*, 517 F. Supp. 3d 609, 620 (E.D. Tex. 2021), *aff'd*, 41 F.4th 696 (5th Cir. 2022). Indeed, the Fifth Circuit has recognized that an absent party's "decision to forgo intervention indicates that it did not deem its own interests substantially threatened by the litigation." *Fed. Ins. Co. v. Singing River Health Sys.*, 850 F.3d 187, 201 (5th Cir. 2017) (quoting *United States v. San Juan Bay Marina*, 239 F.3d 400, 407 (1st Cir. 2001) (cleaned up)). No clinician has moved to intervene here. Zotec cannot manufacture a required-party problem by asserting interests on behalf of non-parties who have chosen not to assert those interests themselves.

Zotec has not shown any risk of inconsistent obligations. The Fifth Circuit is clear that "it is the threat of *inconsistent* obligations, not the possibility of multiple litigation . . . that determines Rule 19 considerations." *Shelton v. Exxon Corp.*, 843 F.2d 212, 218 (5th Cir. 1988) (emphasis in original). "Inconsistent obligations occur when a party cannot comply with one court's order without breaching the order of another court that pertains to the same incident." *Immobiliaria Axial, S.A. de C.V. v. Robles Intern. Serv., Inc.*, No. EP–07–CA–00269–KC, 2007 WL 2973483, at *6 (W.D. Tex. Oct. 11, 2007). Zotec identifies no such risk. Its argument amounts to speculation that unnamed clinicians might someday pursue claims—but the rule "does not contemplate joinder of any party who might possibly be affected by a judgment in any way."

Shelton, 843 F.2d at 218. Speculative interests of this kind do not satisfy Rule 19(a). *Conceal City, L.L.C. v. Looper Law Enf't, LLC*, 917 F. Supp. 2d 611, 623 (N.D. Tex. 2013).

Zotec's impairment argument is equally unavailing. Zotec argues that declaring awards "not binding" would impair absent clinicians' payment rights. D.E. 28 at 18. But Rule 19(a)(1)(B)(i) requires that the absent party itself ***claim*** an interest—the rule does not authorize a defendant to invoke others' interests as a litigation shield. *Union Pac.*, 517 F. Supp. 3d at 620. No clinician has appeared or intervened. Where an existing party has vigorously addressed the interests of absent parties, the Court has "no need to protect a possible required party from a threat of serious injury." *Singing River*, 850 F.3d at 201 (quotations omitted).

Rule 19(b) does not require dismissal. Even if some unidentified clinician qualified as a required party—which it should not—dismissal under Rule 19(b) would not follow where the rule's factors weigh against dismissal. HCSC's damages claims against Zotec can be adjudicated without impairing any clinician's award rights. And dismissal would leave HCSC without any adequate remedy for Zotec's systematic fraud. Equity and good conscience favor proceeding.

V. The FAC Satisfies Both Rule 9(b) and Rule 8.

A. The FAC Satisfies Rule 9(b).

Zotec first suggests that HCSC does not plead the "'who, what, when, and where' of the alleged misrepresentation." D.E. 28 at 21. Not so.

Speaker (the "who"). Zotec, through its agents and employees, made the false statements at issue. FAC ¶¶ 73, 85, 98, 110. This is evidenced by Zotec signing its name on the materials containing the false statements. *See, e.g.*, *id.* ¶ 101.

False Statement (the "what"). Zotec made false statements regarding the eligibility of the underlying services or items for which it was initiating IDR Processes. *Id.* ¶ 73. The FAC includes numerous examples of Zotec's misrepresentations, including regarding the status of open

negotiations, eligibility for state versus federal IDRs, whether Zotec had received responses from HCSC, and more, putting Zotec on fair notice of the scope of HCSC's claims. For instance, Zotec represented that Zotec had received "No Plan/Issuer Response" on the health plan type. *Id*. ¶ 86. This was untrue—from the provider claim summary, "835" remittance advice, and letter sent by HCSC, Zotec knew that the applicable health benefit plan was fully insured. *Id*. ¶ 87. Another example is Zotec misrepresenting that an open negotiations period had started on March 12, 2025. *Id*. ¶ 99. This was not true, as Zotec knew that it had initiated Open Negotiations on March 7, 2025. *Id*. ¶ 100. Beyond these misrepresentations, Zotec also systematically provided false attestations that the "item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process." *Id*. ¶¶ 88, 101, 113.

When and Where. Zotec made these false statements in its submissions to the IDR portals. *Id*. ¶ 73. The FAC also contains the dates each of the statements at issue were made.

Recipient. The false statements at issue made in the IDR portals are transmitted to HCSC, IDREs, and the Departments. *Id*. ¶ 73. All of these recipients rely upon, or are forced to rely upon, Zotec's misrepresentations. *Id*. ¶¶ 167–73.

Why. The goal of Zotec's false statements was to make the underlying services and items appear eligible when, in fact, they are not. *Id*. ¶ 8. This allowed Zotec to procure awards against HCSC—typically at dramatic rates—on ineligible items and services. *Id*. ¶ 77. Zotec's improper submissions have also caused HCSC to enter into false settlement agreements and incur administrative fees and additional administrative and staffing expenses. *Id*. ¶¶ 13, 206. Moreover, while Zotec argues that the FAC's allegations of damages are insufficient under 9(b) (D.E. 28 at 22), the only case they cite, *Gregory v. Houston Independent School District*, does not even ***mention*** damages or harm, instead dismissing a relator claim where there were no "examples of

specific false claims pursuant to the alleged scheme" in the complaint. No. H-14-2768, 2016 WL 5661701, at * 7 (S.D Tex. Sept. 30, 2016).

B. The FAC's Representative Examples Provide Proper Notice Under Rule 9(b).

Zotec next argues the FAC is deficient because it "targets 'thousands' of disputes but only provides a few limited examples" and does not connect each "allegedly fraudulent statement to a specific loss." D.E. 28 at 22. But "to the extent that Defendant faults [HCSC] for failing to itemize with particularity each and every action that formed a part of the fraudulent scheme, [HCSC is] not required to do so, but need only provide some representative examples." *El Paso Disposal, LP v. Ecube Labs Co.*, 766 F. Supp. 3d 692, 708 (W.D. Tex. 2025); *see SC Shine PLLC v. Aetna Dental, Inc.*, No. SA-22-CV-0834, 2023 WL 4216989, at *20 (W.D. Tex. June 26, 2023). That is exactly what HCSC has done here—providing exactly the "concrete details" Zotec alleges are missing.

To that end, the FAC thoroughly details representative examples of fraudulent awards that Defendants procured against HCSC for ineligible services and items, including:

- Where Zotec misrepresented the applicable health benefits plan (FAC ¶¶ 81–92; 140–43);
- Where Zotec misrepresented the date an open negotiations period had commenced (*id.* ¶¶ 93–106); and,
- Where Zotec misrepresented that an open negotiations period had been commenced when, in fact, Zotec knew they had not (*id.* ¶¶ 107–19).

Zotec has wrongfully caused ***thousands*** of awards for ineligible services or items against HCSC. *Id.* ¶ 133. Requiring HCSC to provide a "play-by-play" of each "would be absurd" and has no basis in the law. *Ecube Labs Co.*, 766 F. Supp. 3d at 708. Zotec is on notice of the basis of HCSC's fraud claims. Nothing more is required.

C. The FAC Satisfies Rule 8's Plausibility Standard.

Zotec's next contention is that an "obvious alternative explanation" warrants dismissal of HCSC's claim under Rule 8. D.E. 28 at 23. However, at this stage, the Court is bound to "accept[]"

HCSC's allegations as "true, viewing them in the light most favorable to the plaintiff." *Marks v. JPMorgan Chase & Co.*, No. 1:23-CV-00462, 2024 WL 316923, at *1 (W.D. Tex. Jan. 26, 2024) (citing *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). HCSC has more than plausibly plead Zotec's scheme is fraud rather than a "disagreement."

Moreover, Zotec's reliance on *United States ex rel. Integra Med Analytics, L.L.C. v. Baylor Scott & White Health*, 816 F. App'x 892, 896–97 (5th Cir. 2020) as support is inapposite. There, a plaintiff had filed a False Claims Act action against a hospital system alleging improper coding, where the lawsuit was based on an analysis of inpatient claims data showing the hospital used certain codes more than national averages. *Id*. However, CMS had issued new guidelines at this same time, for which CMS "expected reimbursements to increase under the system." *Id*. at 897. Notably, CMS's conclusion was "supported by the data in [the plaintiff's] own complaint," thus providing an obvious alternative *Id*. Here, in contrast, there is no reasonable explanation for Zotec's knowing and intentional misrepresentations across ***tens of thousands*** of submissions. For example, Zotec has not offered any explanation for why it misrepresented the parties had an open negotiations period when, in fact, Zotec knew they had not. FAC ¶¶ 107–19. Nor are HCSC's fraud allegations based purely on "statistical data." The FAC satisfies Rule 8's plausibility standard.

VI. The *Noerr-Pennington* Doctrine Does Not Apply.

The *Noerr-Pennington* doctrine is inapplicable for three main reasons. First, the IDR process does not fall within the scope of conduct protected by *Noerr-Pennington*. Second, the conduct alleged in the FAC was not directed to a government official but instead occurred in an essentially private context. And third, even if *Noerr-Pennington* could apply, there are factual issues as to whether the "sham" litigation exception applies.

Noerr-Pennington Should Not be Extended to the IDR Process. The *Noerr-Pennington* doctrine is intended to protect First Amendment rights to lobby the government. *Octane Fitness,*

LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 556 (2014). "The guiding principle behind the *Noerr-Pennington* immunity is to insure 'uninhibited access to government policy makers.'" *Mid-Texas Commc'ns Sys., Inc. v. Am. Tel. & Tel. Co.*, 615 F.2d 1372, 1382 (5th Cir. 1980). The doctrine "protect[s] private parties when they petition the government for laws or interpretations of its existing law." *Video Int'l Prod., Inc. v. Warner-Amex Cable Commc'ns, Inc.*, 858 F.2d 1075, 1083 (5th Cir. 1988). Zotec's conduct in the IDR Process does neither: initiating a payment dispute is not an effort to influence government policy or obtain a favorable legal interpretation. And Zotec's representations regarding an item or service's eligibility bears no resemblance to situations where the *Noerr-Pennington* doctrine has been applied, such as to a "campaign designed to influence passage of state laws," "proceedings to defeat award of operating rights," "direct lobbying efforts," or "making representations to local city council." *Mid-Texas*, 615 F.2d at 1382.

The Conduct at Issue Occurred in a Private Context. "The crux of the *Noerr-Pennington* immunity is the need to protect efforts directed to governmental officials for the purpose of seeking redress." *Id.* (citation omitted). Indeed, "*Noerr-Pennington* immunity should not extend to actions occurring in an essentially private context." *Id.* at 1383. Here, while government agencies oversee the certification of IDREs, any supposed "petitioning" related to IDR payment disputes is directed not to the government but to the IDREs, which are private—and often profit-driven—entities. *See* 42 U.S.C. § 300gg-111(c)(4)(A). Zotec itself acknowledges that the government merely "oversee[s]" the system as a whole. D.E. 28 at 25.

The same is true in the arbitration context. Although Congress has created laws regulating arbitration proceedings, the proceedings themselves are "carried out before a privately selected arbitrator" and thus *Noerr-Pennington* is inapplicable. *In re Morrison*, No. 05-45926, 2009 WL 1856064, at *3 (Bankr. S.D. Tex. June 26, 2009). Here, the NSA specifies that both eligibility

decisions and payment determinations are the province of a private IDRE, not the government. *See* 45 C.F.R. § 149.510(c)(1)(v) (eligibility determination); 42 U.S.C. § 300gg-111(c)(5) (payment determination); *see also* Library of Congress, No Surprises Act (NSA) Independent Dispute Resolution (IDR) Process Data Analysis for 2024, https://www.congress.gov/crs-product/R48738 (Under the NSA, "either the insurer or the provider may initiate an independent dispute resolution (IDR) process before a ***private arbitrator*** (i.e., an IDR entity).") (emphasis added).

The Sham Litigation Doctrine Precludes Dismissal At This Stage. Even if the *Noerr-Pennington* doctrine did apply, Zotec's scheme would nevertheless fit into the sham litigation exception. When a party "mak[es] intentional misrepresentations to the court," that suit can be deemed a "sham" if "'a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy.'" *Drs. Hosp. of Laredo v. Cigarroa*, No. SA-21-CV-01068, 2024 WL 3432554, at *5 (W.D. Tex. July 16, 2024) (citation omitted). While "a misrepresentation alone does not cause *Noerr-Pennington* to fall away," "the cloak of *Noerr-Pennington* fades where a litigant has made a material misrepresentation that affects the very core of a litigant's case." *Id*. (cleaned up).

Moreover, "[sham exception] inquiries are typically only properly analyzed through a consideration of evidence outside of the pleadings . . . and as such, are not appropriately considered in the present Rule 12(b)(6) context." *Wolf v. Cowgirl Tuff Co.*, No. 1:15-CV-1195, 2016 WL 4597638, at *9 n.7 (W.D. Tex. Sept. 2, 2016) (citation omitted); *see also Teso LT, UAB v. Luminati Networks Ltd.*, No. 2:20-CV-00073-JRG, 2020 WL 7364606, at *7 (E.D. Tex. Dec. 15, 2020) (Noerr Pennington is "not grounds for 12(b)(6) dismissal.").

Here, the FAC plausibly alleges that Zotec made intentional misrepresentations to the IDREs in the form of inaccurate eligibility attestations—which go to "the very core" of the IDR

Process. *See, e.g.*, FAC ¶¶ 69–80, 88, 101, 113. Zotec's reliance on *Tricon Precast, Ltd. v. Easi Set Indus., Inc.*, 395 F. Supp. 3d 871 (S.D. Tex. 2019), is unavailing because that case did not address fraud or instances where the petitioning party made intentional misrepresentations. *See Relevant Grp., LLC v. Nourmand*, 116 F.4th 917, 928 (9th Cir. 2024) (*Noerr-Pennington* does not apply where a party engages in "knowing fraud" or makes "intentional misrepresentations" that "deprive the litigation of its legitimacy"); *Pension Advisory Grp., Ltd. v. Country Life Ins. Co.*, 771 F. Supp. 2d 680, 699 (S.D. Tex. 2011) ("The law is clear that *Noerr-Pennington* 'does not protect deliberately false or misleading statements.'").

VII. Texas's Judicial Proceedings Privilege is Inapplicable.

Texas's judicial proceedings privilege likewise does not apply. This privilege only extends to bodies that have judicial or quasi-judicial power. To determine whether that power exists, Texas courts look to six factors (none of which are addressed by Zotec), including the power to (1) "exercise judgment and discretion"; (2) "hear and determine or to ascertain facts and decide"; (3) "make binding orders and judgments"; (4) "affect the personal or property rights of private persons"; (5) "examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing"; and (6) "enforce decisions or impose penalties." *Hernandez v. Hayes*, 931 S.W.2d 648, 651 (Tex. Ct. App. 1996) (citation omitted). Several of these important factors are entirely absent from an IDRE's mandate. There is no ability at all to hear or determine facts and decide, there is no witness examination, and IDREs have minimal discretion. The stark differences between litigation and the IDR Process warrant against application of the privilege. *See Consultants in Pain Med., PLLC v. Ellen Boyle Duncan, PLLC*, 690 S.W.3d 739, 763–64 (Tex. Ct. App. 2024) (concluding that even where a CMS contractor had powers to review claims submitted to Medicare or Medicaid, those review powers did not "involve the administration of the functions of the branches of government such that quasi-judicial immunity could apply") (cleaned up).

In addition, the Texas Supreme Court has applied the privilege cautiously, only extending it to "limited instances in which the benefit of the communication to the general public outweighs the potential harm to an individual." *Shell Oil Co. v. Witt*, 464 S.W.3d 650, 655 (Tex. 2015). Here, the IDR process does not implicate the kind of public-facing interests that justify the privilege. The NSA is not a forum for public adjudication, investigation, development of the law, or a place to raise issues of public concern. Extending the privilege in this context would not benefit the public. And the potential for abuse is high, as the allegations in the FAC make clear. The judicial-proceedings privilege should therefore not be extended to the IDR Process.

VIII. The FAC Pleads Fraud.

Zotec next argues that HCSC's fraud claim "fails on the elements" with "no plausible reliance, no direct causation, and only category-level damages" D.E. 28 at 27–29. Zotec is wrong.

Reliance. Zotec contends that reliance is lacking because HCSC "contested eligibility" and "objected in real time." D.E. 28 at 28. Zotec's assertions are wrong. HCSC objected to ***some*** but not ***all*** of the IDRs at issue. In fact, the first exemplar detailed in the FAC is a wrongfully procured IDR award to which HCSC did not submit an objection. FAC ¶¶ 81–92. Moreover, HCSC also explains that, due to Zotec's strategic "batching" tactics, HCSC is not able to meaningfully contest eligibility in each instance. *Id*. ¶¶ 145–53.

Moreover, HCSC's objections do not negate reliance because the NSA ***forces*** HCSC to rely upon Zotec's misrepresentation. Indeed, "[o]nce the IDR Process was allowed to proceed, as a result of Zotec's misrepresentations to third-parties, HCSC was forced, by statute, to rely upon Zotec's misrepresentations and to participate in the IDR Process." *Id*. ¶ 204. The IDR Process is mandatory—there is no way for HCSC to opt out. Accordingly, once IDR Proceedings are initiated based on Zotec's misrepresentations, HCSC is forced to participate and, thus, rely upon

Defendants' misrepresentation. Indeed, "what [other] choice would [HCSC] have?" *In re Mounce*, 390 B.R. 233, 255 & n.27 (Bankr. W.D. Tex. 2008) (finding reliance for purposes of RICO claim).

Zotec's contention also overlooks that IDREs and the Departments also relied upon Zotec's misrepresentations, which caused harm to HCSC. "[F]raud jurisprudence has traditionally focused not on whether a misrepresentation is directly transmitted to a known person alleged to be in privity with the fraudfeasor, but on whether the misrepresentation was intended to reach a third person and induce reliance." *Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 578 (Tex. 2001); *see also Hawkins v. Upjohn Co.*, 890 F. Supp. 609, 612 (E.D. Tex. 1994) ("Plaintiffs assert that the FDA relied on defendants' representations in permitting the distribution of the drugs in question within the United States and that plaintiffs[] relied on the FDA's assessment . . . . Such indirect reliance is sufficient to state a claim of fraud."); *Bardes v. Massachusetts Mut. Life Ins. Co.*, 932 F. Supp. 2d 636, 640–41 (M.D.N.C. 2013) (fraud adequately pled where plaintiff alleged employer made knowingly fraudulent representation to various government, and those government entities relied upon it, to the detriment of the employee).

Here too, Zotec made false representations to IDREs and the Departments. FAC ¶ 165. Zotec intended for the IDREs and Departments to rely upon those misrepresentations. *Id*. ¶ 167. And that's exactly what happened to the detriment of HCSC, in terms of the issuance of awards and administrative fees related to ineligible items and services. *Id*. ¶¶ 169–71. Thus, because Zotec made misrepresentations with the intent "to reach [HCSC] and induce reliance," this element is satisfied. *Ernst & Young*, 51 S.W.3d at 578.

Causation. Zotec argues—without reference to any authority—that the IDREs make "intervening adjudicatory determinations" that "break the causal chain." D.E. 28 at 28. "Establishing causation requires facts sufficient for the fact-finder reasonably to infer that the

defendants' acts were a substantial factor in bringing about the injury." *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 623 F. Supp. 2d 798, 812 (S.D. Tex. 2009) (citation and quotation omitted). "A finding of cause in fact may be based on either direct or circumstantial evidence." *Marathon Corp. v. Pitzner*, 106 S.W.3d 724, 727 (Tex. 2003).

The FAC meets this standard because, but for Zotec's misrepresentations, none of the IDR disputes at issue would have been initiated. FAC ¶ 179. Indeed, the starting point of the process is Zotec inputting information into the IDR portal and attesting to the eligibility of the services or items. *Id*. ¶¶ 37–48. Without this, the system does not allow an IDR Process to be commenced. *Id*. ¶ 41. Thus, without Zotec's false representations, none of the wrongfully initiated IDR Process would ever begin. Accordingly, Zotec is, at the very least, a "substantial factor" in HCSC's injuries.

Damages. Zotec argues in conclusory fashion that HCSC provides "only category-level damages." D.E. 28 at 29. But "the Fifth Circuit has held that a plaintiff does not need to specify the exact dollar amount in a complaint." *Keller v. Kubota Tractor Corp.*, No. 2:16-CV-184, 2016 WL 10931440, at *1 (S.D. Tex. Aug. 22, 2016) (cleaned up). Rather, HCSC need only plead that it "suffered injury." *Foley v. Parlier*, 68 S.W.3d 870, 878 (Tex. Ct. App. 2002). In each of the FAC's exemplars, HCSC describes the specific wrongful amounts of damages (in the form of awards and administrative fees) caused by Zotec's misrepresentations. FAC ¶¶ 90–91, 103–05, 116–18, 131. HCSC also says it was injured in the form of overhead and resources necessary for HCSC to respond to IDR Processes initiated by Zotec for ineligible services and items on certain ineligible claims submitted into the IDR Process. *Id*. ¶¶ 179, 206. Accordingly, these allegations are sufficient to meet the damages element of HCSC's fraud claim.

IX. HCSC Pleads Negligent Misrepresentation.

Zotec raises two arguments for dismissal of HCSC's negligent misrepresentation claim, but neither has merit. *First*, Zotec erroneously invokes a doctrine that has only been applied to claims

asserted against an opposing party's attorney—which has no application here. Specifically, Zotec broadly states that Texas courts preclude liability for negligent misrepresentation claims based on "statements made in adversarial settings." D.E. 28 at 29–30. But the authority Zotec relies upon makes clear this doctrine has only ever been applied to "***an opposing attorney's statements*** made in an adversarial setting, such as litigation." *Valls v. Johanson & Fairless, L.L.P.*, 314 S.W.3d 624, 635 (Tex. Ct. App. 2010) (emphasis added); *see also Mitchell v. Chapman*, 10 S.W.3d 810, 811–12 (Tex. Ct. App. 2000) (applying doctrine to "a suit filed by an unsuccessful litigant against an opposing attorney"); *Ortiz v. Collins*, 203 S.W.3d 414, 422 (Tex. Ct. App. 2006) (same).

Simply put "**something more than a commercial and/or adversarial context is required before negation** of justifiable reliance on an alleged misrepresentation." *Ed & F Man Biofuels Ltd. v. MV FASE*, 728 F. Supp. 2d 862, 882 (S.D. Tex. 2010); *see also IP Investments, LLC v. Velsicol Chem.,* LLC, No. CIV.A. H-13-629, 2014 WL 991819, at *6 (S.D. Tex. Mar. 13, 2014) (same). That "something more" is not present here, and thus Zotec's argument fails as a matter of law.

Second, Zotec argues that HCSC fails to "plead justifiable reliance or proximate causation" but, for the same reasons described above with HCSC's fraud claim, Zotec is mistaken. *See Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010) ("Both fraud and negligent misrepresentation require that the plaintiff show actual and justifiable reliance."); *In re Thrash*, 433 B.R. 585, 601 (Bankr. N.D. Tex. 2010) ("The elements of fraudulent and negligent misrepresentation are virtually identical"). HCSC relied upon Zotec's misrepresentations and was forced to do so by statute even in instances where HCSC objected to eligibility. FAC ¶ 192. Likewise, IDREs and the Departments relied upon the information and attestations that Zotec provided in determining the services and items were eligible for the IDR Process. *Id*. ¶ 193. This

caused the IDR Process to proceed and HCSC to suffer damages as a result. *Id*. ¶ 194. But for Zotec's misrepresentations, none of the IDRs would have proceeded and HCSC would not have faced the resulting harms. *Id*. Accordingly, the FAC states a claim for negligent misrepresentation.

X. The FAC Properly Pleads Fraudulent Inducement.

Zotec complains that HCSC's fraudulent misrepresentation claim requires "an agreement between the parties" and that HCSC "does not plead such a contract." D.E. 28 at 31. Again, Zotec is wrong. To state a claim for fraudulent inducement, HCSC need only plead "the existence of a contract." *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). The FAC meets this standard. HCSC alleges that Zotec's misrepresentations caused "HCSC to unnecessarily ***come to settlement agreements*** with Zotec on certain ineligible claims submitted into the IDR Process." FAC ¶ 206 (emphasis added). It also matters not that Zotec was not privy to the agreements at issue. *See Escopeta Oil & Gas Corp. v. Songa Mgmt., Inc.*, No. 1:06-cv-386, 2007 WL 171721, at *7 (E.D. Tex. Jan. 17, 2007). Accordingly, the FAC states a claim for fraudulent inducement.

XI. The FAC Properly Pleads Money Had and Received.

To prove a claim for money had and received, "all that a 'plaintiff need show is that defendant holds money which in equity and good conscience belongs to him.'" *Villarreal v. First Presidio Bank*, 283 F. Supp. 3d 548, 557 (W.D. Tex. 2017) (citation omitted). Stating such a claim is a "minimal burden." *Allstate Indem. Co. v. Bhagat*, 164 F.4th 426, 436 (5th Cir. 2026). Here, the FAC alleges that Zotec caused, and is continuing to cause, HCSC to pay awards or settlements related to items and services that are ineligible for the IDR Process, and that Zotec has received "a portion of these payments from the providers." FAC ¶¶ 211–12. Zotec's assertion that it is too "speculative" to infer that Zotec was paid for its work is nonsensical. D.E. 28 at 32. To the contrary, it is entirely plausible to conclude that Zotec—a business—was paid for its services.

Zotec also argues that HCSC has an adequate legal remedy through vacatur and must "petition for vacatur[] dispute-by-dispute." D.E. 28 at 33–34. But HCSC is seeking redress for Zotec's systemic misconduct. FAC ¶¶ 8–9. There is no way to assess this conduct by vacating isolated IDR awards. Moreover, courts allow this claim to be pled "in the alternative to claims for which an adequate remedy at law is possible, but not guaranteed." *Off. Stanford Invs. Comm. v. Greenberg Traurig, LLP*, No. 3:12-cv-4641, 2014 WL 12572881, at *10 (N.D. Tex. Dec. 17, 2014).

XII. The FAC Properly Pleads Claims for Declaratory and Injunctive Relief.

Zotec asserts that the FAC's declaratory judgment claim cannot stand without the other causes of action, but HCSC has adequately pled each substantive claim. Moreover, there is no requirement that a declaratory relief claim be "modest," as Zotec seems to suggest. *See* D.E. 28 at 33. And as explained above, HCSC's claims are not foreclosed by the NSA's judicial review provision, nor could vacatur remedy the sweeping misconduct alleged in this case.

As noted above, with respect to HCSC's request for injunctive relief, HCSC is not seeking an "obey-the-law" decree. "An injunction must simply be framed so that those enjoined will know what conduct the court has prohibited." *Meyer v. Brown & Root Const. Co.*, 661 F.2d 369, 373 (5th Cir. 1981). HCSC does not seek a vague command that Zotec must comply with the law. HCSC instead seeks to prohibit Zotec from continuing to submit false attestations and from initiating IDR Processes for ineligible items and services—conduct that is specific and readily understood. *See id.* (order enjoining a corporation from engaging in stated unlawful employment practices not impermissibly broad); *SEC v. Life Partners Holdings, Inc.*, 854 F.3d 765, 785 (5th Cir. 2017) (injunction ordering defendants to refrain from specified conduct was not overly broad).

XIII. Zotec's Arguments Related to Settlements Are Without Merit.

Zotec argues that HCSC cannot recover settlement payments because settlements are "voluntary business decisions." D.E. 28 at 34. That argument ignores the FAC's core allegation:

HCSC was induced to settle by Zotec's misrepresentations. FAC ¶¶ 196–98, 206. The FAC expressly alleges that HCSC "would not have settled" ineligible claims but for Zotec's false representations that those claims qualified for the IDR process. *Id*. ¶ 208. HCSC also does not allege it settled for ordinary "business reasons," as Zotec suggests. It alleges it settled because it was misled. That is sufficient. *See Bhagat*, 164 F.4th at 435 (fraud adequately alleged where settlements were induced by misrepresentations).

XIV. The Court has Personal Jurisdiction over Zotec.

At the pleading stage, HCSC need only make "a prima facie showing of the facts on which jurisdiction is predicated," and the Court must accept its uncontroverted allegations as true and resolve all factual conflicts in its favor. *Ancor Holdings, L.P. v. Landon Cap. Partners, L.L.C.*, 114 F.4th 382, 394 (5th Cir. 2024). The FAC meets this standard, where the conduct at issue involves submissions made on behalf of ***Texas*** providers, against ***Texas*** health plans, and for services rendered in ***Texas*** to ***Texas*** patients. Zotec's cursory arguments to the contrary are unavailing.

A. Zotec Purposefully Directed Its Conduct Toward Texas.

Specific jurisdiction exists where the defendant "purposefully directed its activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities." *Id.* at 394–95 (cleaned up). Zotec's central argument is that its IDR submissions were directed at the Departments and IDREs, not at Texans, and therefore lack forum-directed character. D.E. 28 at 35–36. That argument fundamentally misunderstands the purposeful availment inquiry. As the Fifth Circuit observed in *Wien Air Alaska, Inc. v. Brandt*, the question boils down to this: whether the defendant "purposefully avail[] himself of the privilege of causing a consequence in Texas.'" 195 F.3d 208, 213 (5th Cir. 1999). If yes, there is personal jurisdiction.

The FAC alleges that Zotec contracted with Texas providers, submitted disputes involving Texas patients and Texas claims, and specifically targeted HCSC and its Texas-based health plans.

FAC ¶¶ 18–20, 69–132. The misrepresentations at issue were not sent into a jurisdictional void. The IDR portal may be operated by a federal agency, but that does not sever the connection between Zotec's conduct and the Texas-centered transactions Zotec's conduct was designed to influence. *Fintech Fund, F.L.P. v. Horne*, 836 F. App'x 215, 221 (5th Cir. 2020) ("Horne directed his allegedly tortious conduct at Texas, and he directed it at a Texas entity that he knew was a Texas entity. Those facts are determinative.")

Zotec's reliance on *Walden v. Fiore*, 571 U.S. 277 (2014), is misplaced. *Walden* bars jurisdiction where the only forum connection is the plaintiff's residence—where a defendant aims conduct at a plaintiff without any independent connection to the forum itself. *Id.* at 290. Here, Zotec's conduct at issue was aimed not merely at health plans in Texas, but centered around Texas medical claims, Texas providers, and Texas patients. The forum connection is the substance of the alleged wrongdoing, not a downstream effect of it.

B. HCSC's Claims Arise Directly From Zotec's Forum-Directed Conduct.

Zotec next contends that any Texas-related allegations are not tied to the conduct giving rise to HCSC's claims. D.E. 28 at 36. That is incorrect. The Complaint alleges that Zotec's misrepresentations occurred in IDR proceedings involving Texas services and Texas providers, and that those misrepresentations caused improper reimbursement determinations against HCSC. FAC ¶¶ 69–132. HCSC's asserted claims arise directly from Zotec's forum-directed conduct.

The Fifth Circuit does not require extensive forum contacts to establish specific jurisdiction. "A single act by the defendant directed at the forum state . . . can be enough to confer personal jurisdiction if that act gives rise to the claim being asserted." *Ancor*, 114 F.4th at 394–95 (quotations omitted). That standard is satisfied here many times over. Zotec's conclusory references to "Texas-centric background facts" do not diminish the analysis. D.E. 28 at 36. The Texas-based services or items and Texas patients at issue are not mere background—they are the

subject matter of every (ineligible) IDR dispute at issue. HCSC also alleges that Zotec maintains Texas offices and systematically conducts business in Texas. FAC ¶ 18. These are suit-specific contacts, not peripheral facts, and they properly support a finding of personal jurisdiction.

XV. Venue is Proper in this District.

Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to HCSC's claims occurred here. HCSC alleges that Zotec initiated hundreds of IDR proceedings on behalf of providers within this District, including in Houston, Liberty, and Nacogdoches counties. FAC ¶¶ 20–21. The underlying medical services were rendered to HCSC members in this District—those services are the predicate for every IDR dispute at issue. HCSC's principal Texas campus is also in this District. *Id.* ¶ 21.

Zotec's single-paragraph venue argument rests on the characterization of its conduct as "portal-based submissions" with no Texas forum contacts. D.E. 28 at 36–37. That characterization fails for the reasons already discussed, and it fails under the very venue cases Zotec itself cites. The Section 1391(b)(2) inquiry is qualitative, not quantitative—it asks whether the district has a "substantial connection to the claim, whether or not other forums had greater contacts." *Bigham v. Envirocare of Utah, Inc.*, 123 F. Supp. 2d 1046, 1049 (S.D. Tex. 2000) (citing *Setco Enters. Corp. v. Robbins*, 19 F.3d 1278, 1281 (8th Cir. 1994)); *see also Tactacell, LLC v. Deer Mgmt. Sys., LLC*, 620 F. Supp. 3d 524, 530 (W.D. La. 2022) ("Substantiality is more of a qualitative than quantitative inquiry…"). The venue inquiry focuses on the defendant's conduct and where the operative events occurred. *Bigham*, 123 F. Supp. 2d at 1048.

Both cases Zotec cites confirm venue is proper. In *Bigham*, the court upheld venue in the Southern District of Texas even though the "overwhelming majority" of the defendants' wrongful actions occurred outside the district—the court described the in-district contacts as "meager" and the venue question as "very close," yet still found venue proper because the district had a

substantial connection to the claim. *Id.* at 1049, 1051. Here, there is nothing meager about the connections to this District. The medical services giving rise to the IDRs at issue were rendered by providers in this District. FAC ¶¶ 20–21. Zotec initiated hundreds of IDR proceedings on behalf of those providers. *Id.* ¶ 21. HCSC administers plans for members across this District, including from its Texas campus in Richardson. *Id.* If *Bigham*'s barely sufficient contacts established venue, the far more substantial connections here do as well.

Tactacell is equally instructive, where the court upheld venue in Louisiana against a foreign defendant who had never physically entered the forum, because the anticipated performance of the underlying agreement occurred in Louisiana. *Tactacell*, 620 F. Supp. 3d at 530–31. Indeed, *Tactacell* expressly rejected Zotec's physical-presence argument. The relevant question is where the operative events were centered, not where a defendant was located when it acted. Here, the answer is undoubtedly "the Eastern District of Texas."

XVI. Zotec's Request for a More Definite Statement Should Be Denied.

In the alternative, Zotec seeks a more definite statement under Rule 12(e), which applies only where a pleading is "so vague or ambiguous" that a party cannot reasonably respond. Such motions are "generally disfavored" and only used "for an unintelligible pleading rather than a correction for lack of detail." *Tempur-Pedic Int'l Inc. v. Angel Beds LLC*, 902 F. Supp. 2d 958, 971 (S.D. Tex. 2012) (internal quotation marks and citation omitted). The question is whether the FAC is "so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to itself." *McClain v. United Airlines*, No. H-24-0050, 2024 WL 420907, at *1 (N.D. Tex. Feb. 5, 2024) (internal quotation marks and citation omitted).

That standard is not met here. As explained above, HCSC satisfies Rules 8 and 9(b), meaning proper notice is provided. *See Piney Woods ER III, LLC v. Blue Cross & Blue Shield of Tex.*, No. 5:20-CV-00041, 2020 WL 13042505, at *1 (E.D. Tex. Dec. 17, 2020). Zotec argues that

the FAC lacks sufficient detail for it to identify each and every IDR proceeding at issue or the full list of clinicians involved in the case (D.E. 28 at 37–38), but that is not the proper inquiry. Rule 9(b) only requires HCSC to provide "representative examples," which it has done. *El Paso Disposal*, 766 F. Supp. 3d at 708. Zotec does not need to know the details of each IDR to adequately respond to the FAC. Indeed, the question is whether Zotec "cannot respond, even with a simple denial, in good faith or without prejudice to itself." *McClain*, 2024 WL 420907, at *1.

XVII. Zotec's Motion to Strike Should Be Denied.

Zotec's motion to partially strike the FAC should also be summarily denied.[3] Rule 12(f) allows the Court to strike "from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." A motion to strike "is a drastic remedy to be resorted to only when required for the purposes of justice." *Augustus v. Bd. of Pub. Instruction of Escambia Cnty.*, 306 F.2d 862, 868 (5th Cir. 1962). Similar to a motion for a more definite statement, the Fifth Circuit views motion to strike "with disfavor" and such motions are "infrequently granted." *Gibson Brands, Inc. v. Armadillo Distrib. Enters., Inc.*, No. 4:19-cv-00358, 2020 WL 3453714, at *1 (E.D. Tex. June 24, 2020). Such motions "should be granted only when the pleading to be stricken has no possible relation to the controversy." *Randall v. Bay Ins. Risk Retention Grp., Inc.*, No. 20-cv-430, 2021 WL 674017, at *2 (M.D. La. Feb. 22, 2021). Moreover, the moving party must also demonstrate that the pleading "may cause some form of significant prejudice to one or more of the parties to the action." *Id.* (quoting 5C Wright & Miller's Federal Practice & Procedure § 1382 (3d ed. 2020)).

Zotec asks the Court to strike ***twelve*** separate groups of paragraphs in the FAC, including:

- Allegations related to "how health care reimbursement works," OON reimbursement prior to the NSA, the IDR process, "statistics," and "Zotec's participation in IDR" (FAC

[3] The lack of merit in Zotec's arguments is underscored by comparing the facts of this case to those in the main case relied upon by Zotec, *Paris Emergency Center, LLC v. Blue Cross Blue Shield of Tex.*, No. 5:24-cv-00002, 2025 WL 3171163 (E.D. Tex. Nov. 12, 2025). In that case, a Rule 12(f) motion was granted where more than one year had passed since the plaintiffs ***agreed*** to remove the allegations (which related to claim types not at issue in the case), and after significant time had passed since this Court had already ordered them to do so. *Id.* at *2.

¶¶ 3, 9–11, 22–29, 35–48, 49–57, 64–77, 149, 152–69);

- Allegations that Zotec describes as "policy disagreements" (*id.* ¶¶ 3, 9–12, 50–51, 65–68, 70–77, 137–38, 144–45, 149–51, 171–73, 175, 178, 203);
- Allegations related to the NSA's performance (*id.* ¶¶ 3, 29, 49–55, 135–38);
- Allegations that Zotec argues are related to other billing companies (*id.* ¶¶ 56–57, 64–77, 149);
- Other Zotec disputes related to billing errors (*id.* ¶¶ 5, 59–61);
- "[T]he identity of Zotec's founder" (*id.* ¶ 58);
- "[I]nflammatory buzzwords" (*id.* ¶¶ 10, 20, 53, 62, 64, 69, 72, 134, 138, 144–45, 164, 172, 178, 183, 191); and
- Statements made by Zotec executive, Ed Gaines (*id.* ¶¶ 6, 62–63, 68).

Although Zotec argues that many of these allegations are "immaterial," allegations may be permitted as relevant if they provide "useful background for the parties and the court in the absence of any prejudice." *Randall*, 2021 WL 674017, at *3 (quoting Wright & Miller § 1382). Here, many of the challenged allegations relate directly to Zotec's misconduct and others are "useful background" for the Court, indeed, many are cited throughout this brief. Nor does Zotec even attempt to explain how these allegations will cause it "significant prejudice," nor could it. Zotec itself provides similar background allegations in its motion to dismiss and even begins by explaining how OON health care reimbursement worked prior to the NSA. D.E. 28 at 3.

Zotec also mischaracterizes a number of allegations. For example, paragraphs 70–73 and 76 of the FAC are not "generalized allegations" but rather explain specifically how Zotec's scheme works. Paragraphs 9–11, 145, 149–51, 172, and 178 are not "policy disagreements" but explain how Zotec uses batching to conceal ineligible claims; paragraphs 70–77 and 171, 173, 175, 203 relate specifically to Zotec's scheme and HCSC's reliance; and paragraphs 137–38 provide context by explaining motive (i.e., why the NSA is vulnerable to abuse). The same is true for HCSC's allegations in paragraphs 57, 64–77, and 149 of the FAC, which relate to ***Zotec's*** actions. Similarly, allegations related to other disputes regarding Zotec's billing practices demonstrate a prior pattern of billing errors. *See Hoffman v. Bailey*, No. 13-cv-5153, 2017 WL 1969540, at *8 (E.D. La. May

12, 2017) (denying motion to strike allegations related to prior lawsuits that showed "a pattern of fraudulent behavior"). Nor can Zotec move to strike specific words, such as "scheme" or "abuse," D.E. 28 at 42, when these allegations are "directly relevant to the controversy at issue" and "at least 'minimally supported' by the allegations set forth in the pleadings." *Gilchrist v. Schlumberger Tech. Corp.*, 321 F.R.D. 300, 302 (W.D. 2017) (citation omitted). In sum, Zotec's motion to strike is meritless and should be summarily denied.[4]

CONCLUSION

For the reasons stated above, HCSC respectfully requests that the Court deny each of Zotec's motions in their entirety.

[4] The lack of merit in Zotec's arguments is underscored by comparing the facts of this case to those in the main case relied upon by Zotec, *Paris Emergency Center, LLC v. Blue Cross Blue Shield of Tex.*, No. 5:24-cv-00002, 2025 WL 3171163 (E.D. Tex. Nov. 12, 2025). In that case, a Rule 12(f) motion was granted where more than one year had passed since the plaintiffs ***agreed*** to remove the allegations (which related to claim types not at issue in the case), and after significant time had passed since this Court had already ordered them to do so. *Id.* at *2.

Dated: April 3, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, a true and correct copy of the above was served via email through the Eastern District of Texas's CM/ECF system.

/s/ Jamie R. Kurtz
Jamie R. Kurtz