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15
16 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 ANTHEM BLUE CROSS LIFE AND
HEALTH INSURANCE COMPANY, a
19 California corporation, BLUE CROSS
OF CALIFORNIA DBA ANTHEM
20 BLUE CROSS, a California corporation,

21 Plaintiffs,

22 v.

23 PRIME HEALTHCARE SERVICES –
ST. FRANCIS, LLC; CHINO VALLEY
24 MEDICAL CENTER AUXILIARY;
PRIME HEALTHCARE SERVICES –
25 ENCINO HOSPITAL, LLC; PRIME
HEALTHCARE SERVICES –
26 GARDEN, GROVE, LLC; PRIME
HEALTHCARE HUNTINGTON
27 BEACH, LLC; PRIME HEALTHCARE
28 LA PALMA, LLC; PRIME
HEALTHCARE SERVICES –

Case No. 8:26-cv-00023

Hon. Mónica Ramírez Almadani

**PLAINTIFFS’ MEMORANDUM
OF LAW IN OPPOSITION TO
DEFENDANTS’ MOTION TO
DISMISS**

1 MONTCLAIR, LLC; PRIME
2 HEALTHCARE PARADISE VALLEY,
3 LLC; PRIME HEALTHCARE
4 SERVICES - SHASTA, LLC; PRIME
5 HEALTHCARE SERVICES –
6 SHERMAN OAKS, LLC; AND PRIME
7 HEALTHCARE ANAHEIM, LLC,
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9 Defendants.
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TABLE OF AUTHORITIES

Page(s)

Cases

Allied Tube & Conduit Corp. v. Indian Head, Inc.,
486 U.S. 492 (1998) 15

Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.,
No. CV1403053MWFBKX, 2015 WL 12778048 (C.D. Cal. Oct.
23, 2015)..... 5, 20

Alpha Epsilon Phi Tau Chapter Hous. Ass’n v. City of Berkeley,
114 F.3d 840 (9th Cir. 1997) 18

Anthem Blue Cross Life & Health Insurance Company v. HaloMD LLC,
No. 8:25-cv-01467-KES, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026)*passim*

Aventis Pharma S.A. v. Amphastar Pharms., Inc.,
No. 5:03-00887-MRP PLA, 2009 WL 8727693 (C.D. Cal. Feb. 17,
2009)..... 13

B & B Hardware, Inc. v. Hargis Indus., Inc.,
575 U.S. 138 (2015) 19

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 5

Blue Cross Blue Shield of Tex. v. HaloMD, LLC, et al.,
No. 5:25-cv-00132-RWS, 2026 WL 1557492 (E.D. Tex. May 22,
2026)..... 7, 8

Bonar v. Dean Witter Reynolds, Inc.,
835 F.2d 1378 (11th Cir. 1988)..... 10

In re Buspirone Pat. Litig.,
185 F. Supp. 2d 363 (S.D.N.Y. 2002)..... 15

Caldeira v. Cnty. of Kauai,
866 F.2d 1175 (9th Cir. 1989)..... 17

Cal. Motor Transp. Co. v. Trucking Unlimited,
404 U.S. 508 (1972) 13

1 *Clark v. Bear Stearns & Co.*,
 2 966 F.2d 1318 (9th Cir. 1992)..... 16

3 *Clements v. Airport Auth. of Washoe Cnty.*,
 4 69 F.3d 321 (9th Cir. 1995)..... 18

5 *Clipper Exxpress v. Rockey Mountain Motor Tariff Bureau, Inc.*,
 6 690 F.2d 1240 (9th Cir. 1982)..... 13

7 *Crafty Prods., Inc. v. Fuqing Sanxing Crafts Co.*,
 8 839 F. App’x 95 (9th Cir. 2020)..... 16

9 *CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*,
 10 327 F.3d 1309 (11th Cir. 2003)..... 17

11 *Cuozzo Speed Techs. v. Com. for Intell. Prop.*,
 12 579 U.S. 261 (2016) 6

13 *EHM Prods., Inc. v. Starline Tours of Hollywood, Inc.*,
 14 1 F.4th 1164 (9th Cir. 2021)..... 10

15 *El Paso Natural Gas Co. v. United States*,
 16 632 F.3d 1272 (D.C. Cir. 2011) 6

17 *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*,
 18 189 F. Supp. 2d 385 (E.D. Va. 2002)..... 15

19 *Ford Motor Co. v. Knight L. Grp.*,
 20 No. 2:25-CV-04550-MWC-PVC, 2025 WL 3306280 (C.D. Cal.
 21 Nov. 24, 2025)..... 14

22 *Ford Motor Co. v. National Indem. Co.*,
 23 972 F. Supp. 2d 862 (E.D. Va. 2013)..... 14

24 *Golden Eye Media USA, Inc. v. Trolley Bags UK Ltd.*,
 25 525 F. Supp. 3d 1145 (S.D. Cal. 2021)..... 15

26 *Guardian Flight LLC, v. Health Care Serv. Corp.*,
 27 140 F.4th 271 (5th Cir. 2025)..... 9, 10

28 *Gulf Petro Trading Co. v. Nigerian Nat. Petroleum Corp.*,
 512 F.3d 742 (5th Cir. 2008)..... 12

1 *Hansen v. Musk*,
 2 122 F.4th 1162 (9th Cir. 2024)..... 16

3 *Hansen v. Musk*,
 4 653 F. Supp. 3d 832 (D. Nev. 2023), *aff'd*, 122 F.4th 1162 (9th Cir.
 5 2024)..... 19

6 *Hansen v. Tesla, Inc.*,
 7 145 S. Ct. 2850, 222 L. Ed. 2d 1132 (2025) 16

8 *Harper v. Pro. Prob. Servs. Inc.*,
 9 976 F.3d 1236 (11th Cir. 2020)..... 18

10 *IT Corp. v. Gen. Am. Life Ins.*,
 11 107 F.3d 1415 (9th Cir. 1997)..... 22

12 *Kaiser Found. Health Plan, Inc. v. Abbott Lab’ys, Inc.*,
 13 552 F.3d 1033 (9th Cir. 2009)..... 13

14 *Knieval v. ESPN*,
 15 393 F.3d 1068 (9th Cir. 2005)..... 5

16 *Kottle v. Nw. Kidney Centers*,
 17 146 F.3d 1056 (9th Cir. 1998)..... 14

18 *Kremer v. Chem. Constr. Corp.*,
 19 456 U.S. 461 (1982) 17

20 *Kucana v. Holder*,
 21 558 U.S. 233 (2010) 8

22 *Littlejohn v. United States*,
 23 321 F.3d 915 (9th Cir. 2003)..... 18

24 *Maciel v. Comm’r*,
 25 489 F.3d 1018 (9th Cir. 2007)..... 18

26 *Marino v. Writers Guild of Am., E., Inc.*,
 27 992 F.2d 1480 (9th Cir. 1993)..... 12

28 *McCoy v. Alphabet, Inc.*,
 No. 20-CV-05427-SVK, 2021 WL 405816 (N.D. Cal. Feb. 2, 2021)..... 23

1 *Med-Trans Corp. v. Cap. Health Plan, Inc.*,
 2 700 F. Supp. 3d 1076 (M.D. Fla. 2023) 8, 9, 12

3 *Mod. Orthopaedics of NJ v. Premera Blue Cross*,
 4 No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648 (D.N.J. Nov.
 5 3, 2025)..... 19

6 *Mohazzabi v. Wells Fargo Bank, N.A.*,
 7 No. 22-15357, 2023 WL 4449179 (9th Cir. July 11, 2023)..... 11

8 *Nat’l Council of La Raza v. Cegavske*,
 9 800 F.3d 1032 (9th Cir. 2015)..... 23

10 *Nickoloff v. Wolpoff & Abramson, L.L.P.*,
 11 511 F. Supp. 2d 1043 (C.D. Cal. 2007)..... 12

12 *Nutrishare, Inc. v. Connecticut Gen. Life Ins. Co.*,
 13 No. 2:13-CV-02378-JAM-COMPLAINT, 2014 WL 2624981 (E.D.
 14 Cal. June 12, 2014)..... 21

15 *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*,
 16 572 U.S. 545 (2014) 14

17 *Parklane Hosiery Co. v. Shore*,
 18 439 U.S. 322 (1979) 18

19 *Patricia H. v. Berkeley Unified Sch. Dist.*,
 20 830 F. Supp. 1288 (N.D. Cal. 1993)..... 19

21 *Pour Le Bebe, Inc. v. Guess? Inc.*,
 22 112 Cal. App. 4th 810 (2003)..... 11

23 *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*,
 24 160 F.4th 1110 (11th Cir. 2025)..... 8, 10, 11, 20

25 *Rotkiske v. Klemm*,
 26 589 U.S. 8 (2019) 9

27 *Salinas v. United States R.R. Ret. Bd.*,
 28 592 U.S. 188 (2021) 5

Sander v. Weyerhaeuser Co.,
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1 *SAS Inst., Inc. v. Iancu*,
 2 584 U.S. 357 (2018) 5, 7

3 *In re SmithKline Beecham Clinical Lab'ys, Inc. Lab'y Test Billing*
 4 *Pracs. Litig.*,
 5 108 F. Supp. 2d 84 (D. Conn. 1999) 21, 22

6 *Sonus Networks, Inc. v. Inventergy, Inc.*,
 7 No. C-15-0322 EMC, 2015 WL 4539814 (N.D. Cal. July 27, 2015)..... 13

8 *Sosa v. DIRECTV, Inc.*,
 9 437 F.3d 923 (9th Cir. 2006) 13, 14

10 *Staley v. Gilead Sciences, Inc.*,
 11 No. 19-cv-02573-EMC, 2020 WL 5507555 (N.D. Cal. July 29,
 12 2020)..... 15

13 *Staub v. Nietzel*,
 14 No. 22-5384, 2023 WL 3059081 (6th Cir. Apr. 24, 2023) 18, 19

15 *United Ass'n of Journeymen v. Valley Eng'rs*,
 16 975 F.2d 611 (9th Cir. 1992) 12

17 *United States v. Carpentieri*,
 18 23 F. Supp. 2d 433 (S.D.N.Y. 1998) 17

19 *UnitedHealthCare Servs. v. Team Health Holdings, Inc.*,
 20 3:21-cv-00364, 2022 WL 1481171 (E.D. Tenn. May 10, 2022) 21

21 *Viriyapanthu v. California*,
 22 No. SACV172266JVSDFMX, 2018 WL 6136150 (C.D. Cal. Sept.
 23 24, 2018)..... 15

24 *Wachovia Sec., LLC v. Wiegand*,
 25 No. 07CV243 IEG (BLM), 2007 WL 9776732 (S.D. Cal. Apr. 16,
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27 **Statutes**

28 5 U.S.C. § 580(c) 9

5 U.S.C. § 805..... 6

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1 9 U.S.C. § 10(a)(1) 10

2 9 U.S.C. § 10(a)(1)-(4) 9

3 9 U.S.C. § 10(a)(4) 9, 10

4 9 U.S.C. § 12..... 11

5 29 U.S.C. § 1002(21)(A) 21, 22

6 29 U.S.C. § 1132(a)(3) 20, 21

7 29 U.S.C. § 1132(a)(5) 20

8 29 U.S.C. § 1401..... 9

9 35 U.S.C. § 294..... 9

10 38 U.S.C. § 511..... 6

11 42 U.S.C. § 300gg-111(c)(2) 2

12 42 U.S.C. § 300gg-111(c)(5)(A) 2, 4, 6, 10

13 42 U.S.C. § 300gg-111(c)(5)(C)..... 2

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15 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II)..... 5, 6, 7, 9

16 42 U.S.C. § 300gg-111(c)(5)(F) 3, 4

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19 45 C.F.R. § 149.510(c)(1)(iii)..... 3

20 45 C.F.R. § 149.510(c)(1)(v)..... 3, 16, 17

21 45 C.F.R. § 149.510(c)(4)(vii)..... 7, 8

22 88 Fed. Reg. 75744 (Nov. 3, 2023) 3

23 88 Fed. Reg. 88494 (Dec. 21, 2023)..... 3

24

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1 91 Fed. Reg. 33900-01.....3, 6, 10

2 *CALENDAR YEAR 2023 FEE GUIDANCE FOR THE FEDERAL*

3 *INDEPENDENT DISPUTE RESOLUTION PROCESS UNDER*

4 *THE NO SURPRISES ACT, CMS, <http://bit.ly/48xP1Yc>..... 3*

5 *WIPO Guide to the UDRP, WIPO, available at [https://www.wipo.int/](https://www.wipo.int/amc/en/domains/decisions.html)*

6 *amc/en/domains/decisions.html..... 15*

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INTRODUCTION

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2 The Complaint (ECF No. 1) seeks to hold Defendants liable for filing millions
3 of dollars’ worth of fraudulent disputes against Anthem through the “independent
4 dispute resolution” (“IDR”) process created by the No Surprises Act (“NSA”).¹ As
5 part of their “NSA Scheme,” Defendants submit thousands of knowingly false
6 attestations to Anthem, federal agencies (the “Departments”), and IDR entities
7 (“IDREs”) falsely certifying that disputes are eligible for the IDR process.

8 Defendants’ NSA Scheme works by exploiting the NSA’s honor system, under
9 which providers self-certify dispute eligibility. The Departments built an online
10 screening tool (the “IDR Portal”) through which parties submit disputes and certify
11 that they meet strict eligibility criteria. While this tool prevents parties from
12 inadvertently submitting ineligible disputes, it cannot prevent fraud. Once
13 Defendants make fraudulent submissions, the Departments automatically transmit
14 the dispute to IDREs tasked with making a payment determination.

15 Unlike court proceedings or commercial arbitrations, the IDR process contains
16 no safeguards against fraud. Worse, IDREs only get paid if they issue a payment
17 determination; they do not get paid if they dismiss a dispute as ineligible. In
18 Defendants’ thousands of disputes against Anthem, IDREs stood to earn millions of
19 dollars if, and only if, they issued a payment determination.

20 Defendants claim that the Court is powerless to address their fraud. But
21 accepting their misguided arguments would give Defendants’ NSA Scheme a judicial
22 seal of approval and invite similar bad actors to follow suit, with devastating
23

24
25 ¹ Plaintiffs (collectively, “Anthem”) offer health insurance in the state of California.
26 Compl., ¶¶9-10, 24-29. The eleven defendants (collectively, “Defendants”) are
27 California hospitals owned and controlled by Prime Healthcare Services Inc. and its
28 affiliate, Prime Healthcare Foundation. *Id.*, ¶¶11-21.

1 consequences for health plans and American consumers. The Court should deny
2 Defendants’ motion in its entirety.

3 **BACKGROUND**

4 Congress enacted the NSA to prevent predatory out-of-network providers from
5 sending “surprise” bills for emergency services and “balance billing” patients for any
6 amount not covered by their health plans. Compl., ¶¶1, 44. To resolve surprise billing
7 disputes covered by the NSA, the act requires that (1) the provider attempts to
8 negotiate a reasonable reimbursement rate with the health plan through a 30-day
9 period of “open negotiations”; and (2) any unresolved dispute is submitted to binding
10 IDR proceedings before IDREs, which are private for-profit entities. *Id.* ¶¶46–48.

11 For the IDR process, the NSA contemplates informal “baseball-style”
12 proceedings—each party submits an offer, and the IDRE simply selects one offer
13 without making any factual or legal findings. Compl., ¶¶76–78; 42 U.S.C. § 300gg-
14 111(c)(5)(C). The NSA states that the Departments “shall establish by regulation”
15 IDR procedures, 42 U.S.C. § 300gg-111(c)(2), but neither the Act nor the regulations
16 allow for discovery, hearings, testimony, or the opportunity to view or rebut the
17 opposing party’s offer. Congress mandated that private IDREs shall “select one of
18 the offers submitted ... to be the amount of payment.” *Id.*, § 300gg-111(c)(5)(A). The
19 IDRE’s payment determination is “binding upon the parties involved, in the absence
20 of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR
21 entity involved regarding such claim.” *Id.* § 300gg-111(c)(5)(E)(i)(I).

22 Providers may only initiate IDR for a “qualified IDR item or service” —
23 requiring, among other things, that the patient has private (not government)
24 insurance, that no state surprise billing law governs the dispute, and that the provider
25 has exhausted open negotiations. Compl., ¶50. Providers initiate disputes through an
26 eligibility screening tool on the IDR Portal by answering “Qualification Questions”
27 and submitting a sworn eligibility attestation; the Portal immediately blocks
28

1 ineligible submissions. Compl., ¶¶55–68. Submission triggers a \$115.00
2 administrative fee from both parties, which is non-refundable even if the dispute is
3 later found ineligible. *Id.*, ¶¶67, 80.

4 By regulation, the Departments have *chosen* to delegate the task of reviewing
5 dispute eligibility to IDREs. 45 C.F.R. § 149.510(c)(1)(v). But the Departments also
6 considered a “departmental eligibility review process” in which “the Departments,
7 rather than certified IDR entities, [would] conduct eligibility reviews[.]” 88 Fed. Reg.
8 75744, 75755 (Nov. 3, 2023). While health plans may submit eligibility objections
9 through the IDR Portal, 45 C.F.R. § 149.510(c)(1)(iii), the regulations only require
10 IDREs to review the provider’s attestation of eligibility; IDREs are not required to
11 consider eligibility objections, conduct hearings, or issue written eligibility decisions.
12 45 C.F.R. § 149.510(c)(1)(v).²

13 IDRE eligibility “decisions” are compromised by a perverse economic
14 incentive that would immediately disqualify a factfinder in any court or arbitration:
15 IDREs receive fees ranging from several hundred to over a thousand dollars per
16 dispute, but they do not get paid at all if they find a dispute is ineligible. Compl.,
17 ¶¶80-81, 106; 42 U.S.C. § 300gg-111(c)(5)(F); *CALENDAR YEAR 2023 FEE*
18 *GUIDANCE FOR THE FEDERAL INDEPENDENT DISPUTE RESOLUTION*
19 *PROCESS UNDER THE NO SURPRISES ACT*, CMS, <http://bit.ly/48xP1Yc>
20 (“[C]ertified IDR entities may not collect fees for those cases that they ultimately
21 determine are ineligible for the Federal IDR process.”).³ This reality is a creature of
22 statute. Per the NSA, the IDRE’s only task is to make a payment determination, and
23

24 ² Effective August 3, 2026, the Departments have now revised the regulations to
25 require that IDREs must also consider eligibility objections. Federal Independent
Dispute Resolution Operations, 91 FR 33900-0.1.

26 ³ Defendants contend that IDREs are compensated “in part for ‘the costs incurred in
27 determining’ eligibility” (MTD, 3-4), but this misreads the cited rulemaking
28 language, which addresses only how IDREs set their fees to remain financially viable.
See 88 Fed. Reg. 88494, 88505 (Dec. 21, 2023).

1 the IDRE only receives compensation if it makes a payment determination or the
2 parties settle before the IDRE issues its payment determination. 42 U.S.C. § 300gg-
3 111(c)(5)(A), (F). Congress did not assign eligibility decision making to IDREs. Due
4 to widespread inaccuracy in IDRE eligibility decisions, the Departments have
5 admonished IDREs to “reduce errors” and institute “robust quality assurance (QA)
6 programs to verify dispute eligibility.” Federal IDR Technical Assistance for
7 Certified IDR Entities and Disputing Parties (June 2025), ECF 43-1, Ex. C, at 1.

8 Beginning no later than January 2024, Defendants began flooding the IDR
9 process with thousands of ineligible disputes; more than 75% of those initiated were
10 categorically ineligible for IDR. Compl., ¶¶5, 90-92. Defendants also exploited the
11 Prime Portal, a cloud-based messaging system that restricts access, generates generic
12 communications, and auto-deletes messages after 30 days, depriving Anthem of
13 information needed to respond to notices. *Id.*, ¶¶112–18.

14 Defendants seek to push ineligible claims through IDR because the process
15 has produced exorbitant awards for providers. Providers prevailed in 85% of recent
16 IDR disputes and recovered a median rate over 450% of standard in network rates.
17 *Id.*, ¶¶87–89. Defendants have even secured payments on ineligible Medicaid claims
18 at 2,260% of the applicable Medicaid rate. Compl., ¶¶134–37.

19 Defendants have submitted thousands of disputes against Anthem. *Id.*, ¶90.
20 The IDREs deciding those disputes stand to gain tens of millions of dollars if, and
21 only if, they decide Defendants’ disputes are eligible for IDR. Since January 2024,
22 Defendants fraudulently secured more than \$15 million in improper awards while
23 also costing Anthem more than \$2 million in fees. *Id.*, ¶92.

24 Based on Defendants’ conduct, Anthem asserts four counts against all
25 Defendants: (1) violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Count I); (2)
26 vacatur of NSA dispute resolution awards, brought in the alternative (Count II); (3)
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1 an ERISA claim for equitable relief (Count III); and (4) declaratory and injunctive
2 relief (Count IV).

3 LEGAL STANDARD

4 A complaint need only allege facts sufficient “to raise a right to relief above
5 the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). On a
6 motion to dismiss, the court must “accept all factual allegations in the complaint as
7 true and construe the pleadings in the light most favorable to the nonmoving party.”
8 *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

9 Where a plaintiff alleges a scheme involving “hundreds or thousands” of
10 misrepresentations, Rule 9(b) requires only that the plaintiff plead “examples” of the
11 fraud with the requisite particularity. *See Almont Ambulatory Surgery Ctr., LLC v.*
12 *UnitedHealth Grp., Inc.*, No. CV1403053MWFBKX, 2015 WL 12778048, at *8
13 (C.D. Cal. Oct. 23, 2015).

14 ARGUMENT

15 I. Defendants Cannot Avoid Judicial Review of Their Fraud.

16 A. The NSA’s Judicial Review Provision Does Not Bar Anthem’s Claims.

17 1. The Judicial Review Provision Does Not Apply to the NSA 18 Scheme.

19 The plain language of 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (the “Judicial
20 Review Provision”) applies solely to an individual IDRE payment determination. It
21 does not limit judicial review of Defendants’ NSA Scheme, through which they
22 knowingly submitted thousands of fraudulent eligibility attestations.

23 Courts must apply a “strong presumption in favor of judicial review,” which
24 can only be overcome by “clear and convincing indications that Congress meant to
25 foreclose review.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 370 (2018) (citation
26 omitted). “To the extent there is ambiguity in the [provision,] it must be resolved in
27 [] favor” of providing for judicial review. *Salinas v. United States R.R. Ret. Bd.*, 592
28

1 U.S. 188, 196 (2021). This presumption applies even when reviewing “statutes that
2 may limit or preclude review,” *Cuozzo Speed Techs. v. Com. for Intell. Prop.*, 579
3 U.S. 261, 273 (2016), and “dictates that such provisions must be read narrowly,” *El*
4 *Paso Natural Gas Co. v. United States*, 632 F.3d 1272, 1276 (D.C. Cir. 2011).

5 Here, the NSA states that “[a] determination of a certified IDR entity under
6 subparagraph (A) ... shall not be subject to judicial review, except in a case described
7 in any of paragraphs (1) through (4) of section 10(a) of title 9.” 42 U.S.C. § 300gg-
8 111(c)(5)(E)(i)(II). The only “determination” an IDRE makes under subparagraph
9 (A) is its decision to “select one of the offers submitted ... to be the amount of
10 payment.” *Id.* § 300gg-111(c)(5)(A). The plain language of the Judicial Review
11 Provision thus precludes judicial review of the offer selection. *See id.* But neither
12 “subparagraph (A)” nor any other provision of the NSA states that IDREs decide
13 eligibility. The NSA simply “does not contemplate an eligibility determination
14 process” such that the Departments could just as easily have made “eligibility
15 determinations the responsibility of the Departments.” 91 Fed. Reg. 33900-01,
16 33942-44. Congress cannot have clearly and convincingly foreclosed review of a
17 decision that it did not delegate to IDREs in the first place.

18 In contrast to the NSA, other federal statutes include broad judicial review
19 provisions. The Congressional Review Act states, “No determination, finding, action,
20 or omission under this chapter shall be subject to judicial review.” 5 U.S.C. § 805.
21 The Veterans Judicial Review Act states that the Secretary “shall decide **all questions**
22 **of law and fact** necessary to” address “the provision of benefits,” and “the decision
23 of the Secretary **as to any such question** ... may not be reviewed by any other official
24 or by any court[.]” 38 U.S.C. § 511 (emphasis added). Had Congress intended to
25 broadly preclude judicial review of any question of law or fact addressed in the IDR
26 process, it would have done so. It did not.

27
28

1 Moreover, the Departments’ regulations confirm that the Judicial Review
2 Provision is strictly limited to IDRE payment determinations. Per 45 C.F.R. §
3 149.510(c)(4)(vii), a determination made by a certified IDR entity “under paragraph
4 (c)(4)(ii) ... is not subject to judicial review.” The sole determination under (c)(4)(ii)
5 is the IDRE’s selection of the payment determination. Eligibility reviews appear in a
6 separate provision, paragraph (c)(1)(v), and are not subject to the same restriction.
7 Like the NSA itself, the regulations confirm that the judicial review limitation does
8 not apply to eligibility decisions, and Congress’s restriction applies exclusively to
9 the IDRE’s selection of the payment determination “under subparagraph (A).” 42
10 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

11 This court should decline Defendants’ invitation to follow *Anthem Blue Cross*
12 *Life & Health Insurance Company v. HaloMD LLC*, No. 8:25-cv-01467-KES, 2026
13 WL 982629 (C.D. Cal. Apr. 9, 2026) (“*HaloMD CA*”) and *Blue Cross Blue Shield of*
14 *Tex. v. HaloMD, LLC, et al.*, No. 5:25-cv-00132-RWS, 2026 WL 1557492 (E.D. Tex.
15 May 22, 2026) (“*HaloMD TX*”), both of which are on appeal and rest on critical legal
16 errors.

17 First, instead of asking whether Congress unequivocally *foreclosed review* of
18 eligibility decisions, both decisions asked whether the statute unequivocally
19 *preserved review* of eligibility decisions. *See HaloMD TX*, 2026 WL 1557492, at *4
20 (finding no evidence that Congress “intend[ed] to impliedly provide an avenue for
21 challenging eligibility decisions”); *HaloMD CA*, 2026 WL 982629, at *9 (finding no
22 text in the statute preserves “judicial review of IDREs’ eligibility determinations”).
23 Both analyses thus violate controlling Supreme Court law requiring courts to apply
24 the “strong presumption in favor of judicial review” and ask whether there are “clear
25 and convincing indications that Congress meant to foreclose review” of eligibility
26 decisions. *SAS*, 584 U.S. at 370 (citation omitted).

1 Second, both decisions held that the NSA’s judicial review provision was
2 expanded through subsequent regulations. *See HaloMD CA*, 2026 WL 982629, at *8
3 (“It makes no difference whether the directive to first determine eligibility is in the
4 NSA’s text or the implementing regulations.”); *HaloMD TX*, 2026 WL 1557492, at
5 *4 (finding based on regulations that “inherent in the NSA’s bar of judicial review of
6 payment determinations is a limitation on the review of eligibility decisions.”). But
7 “[i]f Congress wanted the jurisdictional bar to encompass decisions specified by
8 regulation along with those [specified] by statute,” it “could easily have said so.”
9 *Kucana v. Holder*, 558 U.S. 233, 248 (2010). It did not, and “[s]eparation-of-powers
10 concerns [] caution us against reading legislation, absent clear statement, to place in
11 executive hands authority to remove cases from the Judiciary’s domain.” *Id.*, at 237.

12 Finally, both decisions declined to address the fact that the regulations
13 delegating eligibility decisions to IDREs provide that payment determinations are
14 “not subject to judicial review,” while eligibility decisions carry no such restriction.
15 45 C.F.R. § 149.510(c)(4)(vii). Both courts selectively invoked the NSA’s
16 regulations to broaden the Judicial Review Provision while ignoring the portion of
17 those same regulations that confines the bar to payment determinations alone.

18 **2. The NSA Does Not Incorporate the FAA’s Procedures, Much**
19 **Less Impose Them as an Exclusive Remedy.**

20 Even if the Judicial Review Provision did apply (it does not), Defendants’
21 arguments fail for a second independent reason: the NSA does not incorporate the
22 FAA’s procedural provisions, much less impose them as exclusive remedies. *See*
23 *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1082 (M.D. Fla.
24 2023), *aff’d sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*,
25 160 F.4th 1110 (11th Cir. 2025) (“The FAA’s procedural law does not govern appeals
26 of NSA IDR awards.”).

1 The NSA provides that “[a] determination of a certified IDR entity under
2 subparagraph (A) ... shall not be subject to judicial review, except in a case described
3 in any of paragraphs (1) through (4) of section 10(a) of title 9 [*i.e.*, the FAA].” 42
4 U.S.C. § 300gg-111(c)(5)(E)(i)(II). The cited paragraphs outline four circumstances
5 in which a party may challenge an arbitration award. *See* 9 U.S.C. § 10(a)(1)-(4).
6 “Although this explains the grounds upon which a party may challenge an award, it
7 does not discuss how to raise this challenge. In the FAA, those rules are found in
8 other sections, such as §§ 6, 9, and 12 of the FAA. But the NSA does not invoke or
9 discuss §§ 6, 9, 12, or any other sections of the FAA.” *Med-Trans*, 700 F. Supp. 3d
10 at 1083 (internal citations omitted); *see Guardian Flight LLC, v. Health Care Serv.*
11 *Corp.*, 140 F.4th 271, 276 (5th Cir. 2025) (“Congress chose not to incorporate [FAA]
12 § 9 into the NSA.”).

13 In contrast to the NSA, many other federal statutes expressly incorporate FAA
14 procedures by listing out each provision or incorporating all of Title 9. *See, e.g.*, 5
15 U.S.C. § 580(c) (“A final award ... may be enforced pursuant to sections 9 through
16 13 of title 9.”); 29 U.S.C. § 1401 (awards shall be enforced “under Title 9”); 35
17 U.S.C. § 294 (“awards shall be governed by title 9[.]”). To import the FAA’s
18 procedures into the NSA violates the “fundamental principle of statutory
19 interpretation that absent provision[s] cannot be supplied by the courts,” especially
20 “when, as here, Congress has shown that it knows how to adopt the omitted language
21 or provision.” *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (citations and quotes
22 omitted).

23 Per the NSA’s plain language, Anthem may seek “judicial review” of an
24 IDRE’s selection of the payment determination in any “case described in any of
25 paragraphs (1) through (4) of section 10(a) of title 9.” 42 U.S.C. § 300gg-
26 111(c)(5)(E)(i)(II). Anthem is entitled to judicial review under Section 10(a)(4)
27 because the IDREs “exceeded their powers” by issuing payment determinations on
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1 disputes that were ineligible for IDR.⁴ 9 U.S.C. § 10(a)(4). The NSA only permits
2 IDREs to issue a payment determination for a “qualified IDR item or service.” 42
3 U.S.C. § 300gg-111(c)(5)(A). Regardless of any *regulatory* authority to review
4 eligibility, “certified IDR entities are *statutorily* prohibited from making payment
5 determinations for items and services that are not subject to the No Surprises Act.”
6 91 Fed. Reg. 33900-01, 33933. (emphasis added).⁵

7 Anthem pleads that IDREs issued thousands of payment determinations for
8 services that were not a “qualified IDR item or service.” *E.g.*, Compl., ¶252. As
9 contemplated by the Judicial Review Provision, this is a “case described in” 9 U.S.C.
10 § 10(a)(4) because the IDREs exceeded their statutory authority by “purport[ing] to
11 exercise powers that the parties [and Congress] did not intend [them] to possess.”
12 *EHM Prods., Inc. v. Starline Tours of Hollywood, Inc.*, 1 F.4th 1164, 1174 (9th Cir.
13 2021) (citation omitted).

14 Anthem may also seek “judicial review” of IDR payment determinations under
15 Section 10(a)(1) because “the award was procured by ... fraud” through Defendants’
16 false attestations of eligibility. 9 U.S.C. § 10(a)(1). “[P]erjury materially related to
17 an issue in the arbitration” is sufficient to meet this standard. *See Bonar v. Dean*
18 *Witter Reynolds, Inc.*, 835 F.2d 1378, 1383-84 (11th Cir. 1988).⁶

20 ⁴ *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.* is inapposite. There,
21 the plaintiff argued that an IDRE exceeded its authority by applying an improper
22 presumption in favor of the plan’s QPA. 160 F.4th 1110, 1117 (11th Cir. 2025). The
23 court held that an arbitrator’s reasoning is irrelevant under 9 U.S.C. 10(a)(4); the only
24 question is whether the arbitrator “performed the assigned task.” *Id.* at 1120. Here,
by contrast, Anthem argues that the IDREs strayed from their assigned task altogether
by issuing awards for ineligible claims. *See id.*

25 ⁵ *HaloMD CA* failed to consider Congress’s limitation on IDREs’ authority to issue
26 payment determinations for only “a qualified IDR item or service.” *See* 2026 WL
982629, at *8.

27 ⁶ Defendants’ citation to other cases alleging fraud in IDR proceedings are inapposite.
28 *See Guardian Flight*, 140 F.4th at 622 (plaintiff failed to plead any specific

1 As detailed in the Complaint, Anthem could not and did not discover the fraud
2 in connection with all these several thousand disputes. The scheme began in 2023 or
3 earlier, before Anthem had developed workflows to detect it. Compl., ¶120. And
4 Defendants concealed their fraud and prevented Anthem from timely raising
5 objections to each ineligible dispute: (1) by simultaneously submitting an avalanche
6 of disputes all at once to overwhelm Anthem and (2) with the Prime Portal, which
7 permitted only a single Anthem employee to access it at a time and automatically
8 deleted messages after 30 days. *Id.* ¶¶94, 116-17. This is simply not a case in which
9 “the ‘fraud’ was known during IDR and disclosed to the IDRE” in every dispute.
10 MTD at 16-17 (internal citation omitted).

11 The requirement that fraud not have been discoverable also presumes the
12 existence of an opportunity to litigate the alleged fraud “at a confrontational,
13 adversarial hearing[.]” *Pour Le Bebe, Inc. v. Guess? Inc.*, 112 Cal. App. 4th 810, 833
14 (2003) (cited with approval by *Mohazzabi v. Wells Fargo Bank, N.A.*, No. 22-15357,
15 2023 WL 4449179, at *1 (9th Cir. July 11, 2023)). Here, there was no such
16 “confrontational, adversarial hearing” on eligibility.⁷

17 **3. Anthem’s Claims Are Not a Collateral Attack on IDR**
18 **Determinations.**

19 Because the NSA does not incorporate the FAA’s procedural provisions,
20 Defendants’ “collateral attack” arguments fail. Courts apply the collateral-attack
21 doctrine to prevent parties from circumventing the FAA’s exclusive procedures for
22 challenging arbitration awards. *See Sander v. Weyerhaeuser Co.*, 966 F.2d 501, 503
23 (9th Cir. 1992) (“[T]he three month limitation [in 9 U.S.C. § 12] is meaningless if a
24 party to the arbitration proceedings may bring an independent direct action asserting
25 _____
26 misrepresentation about QPA in single IDR proceeding); *Reach Air*, 160 F.4th at
1122 (same).

27 ⁷ *HaloMD CA* rejected this argument but did not address these authorities. 2026 WL
28 982629, at *15.

1 such claims outside of the statutory time period.”) (citation omitted); *see Nickoloff v.*
2 *Wolpoff & Abramson, L.L.P.*, 511 F. Supp. 2d 1043, 1044 (C.D. Cal. 2007) (“9 U.S.C.
3 §§ 1–16, provides the exclusive remedy” for challenging award); *Wachovia Sec.,*
4 *LLC v. Wiegand*, No. 07CV243 IEG (BLM). 2007 WL 9776732, at *4 (S.D. Cal.
5 Apr. 16, 2007) (“9 U.S.C. §§ 10-12” bars collateral attacks).⁸ That rationale has no
6 bearing here because “the NSA does not invoke or discuss §§ 6, 9, 12, or any other
7 sections of the FAA.” *Med-Trans*, 700 F. Supp. 3d at 1083.

8 Moreover, Anthem’s claims do not involve “binding” determinations. An IDR
9 payment determination is only “binding ... in the absence of ... evidence of
10 misrepresentation of facts presented to the IDR entity[.]” 42 U.S.C. § 300gg-
11 111(c)(5)(E)(i)(I). In each relevant dispute, Defendants presented misrepresentations
12 of fact regarding dispute eligibility to the IDRE. Because the payment determinations
13 at issue are not “binding,” there is no collateral attack.

14 Further, Anthem’s requested relief shows that its claims are not a collateral
15 attack. A collateral attack exists where the plaintiff seeks only the “award it believes
16 it should have received.” *Gulf Petro Trading Co. v. Nigerian Nat. Petroleum Corp.*,
17 512 F.3d 742, 750 (5th Cir. 2008). Here, Anthem seeks prospective injunctive relief
18 prohibiting Defendants from submitting false eligibility attestations and initiating
19 IDR for ineligible services.⁹ Compl., ¶369. Such prospective relief cannot be
20 construed as a collateral attack. *Gulf Petro*, 512 F.3d at 750.

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22 ⁸ Defendants other authorities—*Marino v. Writers Guild of Am., E., Inc.*, 992 F.2d
23 1480, 1484 (9th Cir. 1993) and *United Ass’n of Journeymen v. Valley Eng’rs*, 975
24 F.2d 611, 615 (9th Cir. 1992) —used the phrase collateral attack but not in a context
of asserting legal claims in the alternative to seeking vacatur.

25 ⁹ *HaloMD CA* erroneously held that the Judicial Review Provision should apply to
26 injunctive relief because enforcing an injunction could require a court to determine
27 whether a future “challenged attestation was false.” *HaloMD*, 2026 WL 982629, at
28 *9–10. Reviewing whether a party submitted a known misrepresentation is distinct
from reviewing an IDRE’s selection of the payment determination.

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B. The *Noerr-Pennington* Doctrine Does Not Immunize Defendants From Liability for Their Fraudulent NSA Scheme.

Defendants argue that the NSA Scheme constitutes petitioning activity protected by the First Amendment and is therefore immune from liability under the *Noerr-Pennington* doctrine. This is a factual defense, and courts “rarely award *Noerr-Pennington* immunity at the motion to dismiss stage[.]” *Sonus Networks, Inc. v. Inventergy, Inc.*, No. C-15-0322 EMC, 2015 WL 4539814, at *2 (N.D. Cal. July 27, 2015). The argument also fails for at least two additional reasons.

First, Defendants’ intentional misrepresentations of fact do not give rise to *Noerr* immunity as a matter of law. See *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972) (“Misrepresentations ... are not immunized when used in the adjudicatory process.”); *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1261 (9th Cir. 1982) (“There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body.”). The Ninth Circuit recognizes three circumstances in which the sham litigation exception to *Noerr* may apply, including where the “allegedly unlawful conduct consists of making intentional misrepresentations” in an adjudicatory proceeding.¹⁰ *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 938 (9th Cir. 2006) (citation and quotes omitted). Defendants’ cited authorities confirm this principle exempts their NSA Scheme from *Noerr* immunity. E.g., *Kaiser Found. Health Plan, Inc. v. Abbott Lab’ys, Inc.*, 552 F.3d 1033, 1050 (9th Cir. 2009) (plaintiff put forth evidence sufficient to invoke fraud exception to *Noerr* immunity); *Aventis Pharma S.A. v. Amphastar Pharms., Inc.*, No. 5:03-00887-MRP PLA, 2009 WL 8727693, at *9 (C.D. Cal. Feb. 17, 2009) (applying fraud

¹⁰ Defendants’ arguments and authorities addressing the other two exceptions are inapposite.

1 exception because patent office issued patent in “reli[ance] on Aventis’ factual
2 representations and duty of candor”).

3 The Complaint alleges that Defendants’ false attestations “deprived the [IDR
4 proceedings] of [their] legitimacy” by allowing initiation of IDR for disputes that
5 were statutorily ineligible. *See Sosa*, 437 F.3d at 938 (citation omitted). In the
6 absence of Defendants’ misrepresentation, there would have been no IDR
7 proceedings at all. *Cf. Ford Motor Co. v. Knight L. Grp.*, No. 2:25-CV-04550-MWC-
8 PVC, 2025 WL 3306280, at *11 (C.D. Cal. Nov. 24, 2025) (finding defendants’
9 inflated attorney’s fees request did not deprive proceeding of legitimacy because
10 plaintiff conceded defendants prevailed in the underlying litigation and were entitled
11 to attorneys’ fees).

12 Second, *Noerr* immunity cannot apply to false statements made as part of a
13 private payment dispute before private companies (IDREs). *Noerr* immunity is
14 premised on the First Amendment’s Petition Clause, which “guarantees the right ‘to
15 petition the Government for a redress of grievances.’” *Kottle v. Nw. Kidney Centers*,
16 146 F.3d 1056, 1059 (9th Cir. 1998). The doctrine protects “conduct (including
17 litigation) aimed at influencing decision making by the government.” *Octane Fitness*,
18 *LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014). The Ninth Circuit
19 has consistently applied it only to actions that seek relief from a defendant’s
20 petitioning of the government. *See, e.g., Sosa*, 437 F.3d at 929 (immunity when
21 petitioning a “department of the government”).

22 Defendants submit false attestations of eligibility in non-public IDR
23 proceedings before private IDREs. Such statements “before a private organization
24 does not implicate the First Amendment.” *Ford Motor Co. v. National Indem. Co.*,
25 972 F. Supp. 2d 862, 868-69 (E.D. Va. 2013). Because “the First Amendment only
26 protects citizens from government conduct infringing on free speech,” *Noerr* does
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1 not protect petitions to private companies, such as the IDREs. *Golden Eye Media*
2 *USA, Inc. v. Trolley Bags UK Ltd.*, 525 F. Supp. 3d 1145, 1240–41 (S.D. Cal. 2021).

3 Defendants’ assertion that IDR “is akin to an agency adjudication” is wrong
4 and unsupported by their cited authorities. *See* MTD 13. In *Allied Tube & Conduit*
5 *Corp. v. Indian Head, Inc.*, the court held that *Noerr* immunity applies only where
6 the harm at issue “is the result of valid *governmental* action, as opposed to private
7 action.” 486 U.S. 492, 499 (1998) (emphasis added) (citation omitted).¹¹ In
8 *Viriyapanthu v. California*, No. SACV172266JVSDFMX, 2018 WL 6136150, at *7–
9 10 (C.D. Cal. Sept. 24, 2018), the plaintiff never disputed that Mandatory Fee
10 Arbitration Act petitions to a county bar association constituted First Amendment
11 petitioning, and he alleged the OCBA exercised governmental authority. *Id.*, 2018
12 WL 6265091, at *10 (C.D. Cal. June 7, 2018). Whether *Noerr* applies to non-
13 governmental arbitral bodies was therefore never litigated, and the Ninth Circuit
14 affirmed solely on Rule 9(b) grounds without reaching *Noerr* at all. 813 F. App’x
15 312, 313 (9th Cir. 2020).

16 Defendants’ reliance on *Eurotech, Inc. v. Cosmos Eur. Travels*
17 *Aktiengesellschaft*, 189 F. Supp. 2d 385, 392 (E.D. Va. 2002), is likewise misplaced.
18 *Eurotech* applied *Noerr* to a proceeding before the World Intellectual Property
19 Organization’s (“WIPO”)—a “quasi-public organization that is an integral part of the
20 United Nations”—involving disputes over the public registration of Internet domain
21 names, with formal complaints and published reasoned decisions. 189 F. Supp. 2d at
22 392; *see also* *WIPO Guide to the UDRP*, WIPO, available at [https://www.wipo.int/](https://www.wipo.int/amc/en/domains/decisions.html)
23 [amc/en/domains/decisions.html](https://www.wipo.int/amc/en/domains/decisions.html). IDR shares none of these characteristics. IDREs are

24 _____
25 ¹¹ Defendants make false statements to HHS to access the IDR process, but *Noerr*
26 does not apply if “the government acts in a [] ministerial or non-discretionary
27 capacity in direct reliance on the representations made by private parties.” *In re*
28 *Buspirone Pat. Litig.*, 185 F. Supp. 2d 363, 369 (S.D.N.Y. 2002); *see also* *Staley v.*
Gilead Sciences, Inc., No. 19-cv-02573-EMC, 2020 WL 5507555, at *16 (N.D. Cal.
July 29, 2020) (citing *Buspirone*’s with approval).

1 purely private, for-profit companies that applied to federal agencies for the role;
2 Congress delegated no authority directly to them. And unlike WIPO proceedings,
3 IDR involves no matters of public concern and produces no published decisions.
4 Because IDR proceedings raise no First Amendment concerns, *Noerr* does not apply.

5 **C. Collateral Estoppel Does Not Apply to Anthem’s Claims.**

6 The collateral estoppel doctrine is incompatible with IDR procedures and
7 Anthem’s well-pleaded factual allegations. IDREs are not required to conduct
8 hearings, consider a health plan’s factual objections, or issue decisions (written or
9 otherwise) describing their rationale for eligibility decisions. *See* 45 C.F.R.
10 § 149.510(c)(1)(v). No IDRE has (or can) evaluate Anthem’s allegations regarding
11 Defendants’ scheme to submit thousands of knowingly ineligible IDR disputes
12 against Anthem.

13 Collateral estoppel requires the asserting party to “introduce a sufficient record
14 of the prior proceeding to enable the trial court to pinpoint the exact issues previously
15 litigated.” *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1321 (9th Cir. 1992) (citation
16 omitted). The doctrine “cannot apply without a record showing the specific issues
17 litigated in arbitration.” *Crafty Prods., Inc. v. Fuqing Sanxing Crafts Co.*, 839 F.
18 App’x 95, 98 n.2 (9th Cir. 2020). Defendants cannot produce any such record of an
19 eligibility “decision,” so their argument fails at the outset.

20 Defendants also cannot establish the elements of collateral estoppel, including
21 that: “(1) the issue at stake was identical in both proceedings; (2) the issue was
22 actually litigated and decided in the prior proceedings; (3) there was a full and fair
23 opportunity to litigate the issue; and (4) the issue was necessary to decide the merits.”
24 *Hansen v. Musk*, 122 F.4th 1162, 1172 (9th Cir. 2024), cert. denied sub nom. *Hansen*
25 *v. Tesla, Inc.*, 145 S. Ct. 2850, 222 L. Ed. 2d 1132 (2025) (citation omitted).

1 **1. IDREs Did Not Determine Whether Defendants Engaged in**
2 **Fraud, and the Issues Are Not Identical.**

3 Regulations only require IDREs to “review[] the notice of IDR initiation” with
4 the provider’s attestation of eligibility “to determine whether the Federal IDR process
5 applies.” Compl., ¶75; 45 C.F.R. § 149.510(c)(1)(v). The issue before this Court is
6 categorically different: whether Defendants made thousands of fraudulent
7 attestations of eligibility as part of a scheme to defraud Anthem. These are “two,
8 quite separate inquiries.” See *United States v. Carpentieri*, 23 F. Supp. 2d 433, 435–
9 36 (S.D.N.Y. 1998) (distinguishing, for the purposes of a statute barring judicial
10 review, between two questions: (1) “whether [defendant] falsified his initial
11 employment papers and his claim forms for FECA” and (2) whether the defendant’s
12 “submission, if not fraudulent, establishes eligibility for benefits”).

13 **2. Defendants’ Fraud Was Neither Litigated Nor Necessary.**

14 IDREs have no obligation to consider Anthem’s objections or issue written
15 decisions addressing those objections. Accordingly, Anthem’s challenges to
16 eligibility were “not ‘actually litigated’ and could not possibly have been ‘critical and
17 necessary’ to the judgment.” *CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*, 327
18 F.3d 1309, 1318 (11th Cir. 2003).

19 **3. Anthem Did Not Have a Full and Fair Opportunity.**

20 Collateral estoppel also does not apply where, as here, “there is reason to doubt
21 the quality, extensiveness, or fairness of the procedures followed in prior litigation.”
22 *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 (1982) (citation omitted). “When
23 determining whether a party received a full and fair opportunity to litigate an issue,
24 the inquiry is whether the minimum due process requirements guaranteed by the
25 fourteenth amendment are satisfied.” *Caldeira v. Cnty. of Kauai*, 866 F.2d 1175,
26 1180 (9th Cir. 1989). “At a minimum, Due Process requires a hearing before an
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1 impartial tribunal.” *Clements v. Airport Auth. of Washoe Cnty.*, 69 F.3d 321, 333 (9th
2 Cir. 1995).

3 Under the NSA, however, IDRE eligibility “decisions” are not impartial.
4 IDREs only receive payment if they agree that a dispute is eligible. Compl., ¶¶81,
5 106. Judges are typically compensated with a salary, and arbitrators are paid for all
6 their work on a case up through the point of dismissal. But per the NSA, an IDRE
7 who dismisses a dispute as ineligible forfeits the right to any compensation at all. *Id.*
8 Because IDREs have an immediate financial stake in the outcome of their eligibility
9 “decisions,” they are not impartial fact finders to whom collateral estoppel applies.
10 *Alpha Epsilon Phi Tau Chapter Hous. Ass’n v. City of Berkeley*, 114 F.3d 840, 844
11 (9th Cir. 1997) (“[D]ue process is violated if a decisionmaker has a ‘direct, personal,
12 substantial pecuniary interest’ in the proceedings”) (quoting *Tumey v. Ohio*, 273 U.S.
13 510, 523 (1927)); *e.g.*, *Harper v. Pro. Prob. Servs. Inc.*, 976 F.3d 1236, 1241, 1243-
14 44 (11th Cir. 2020) (because defendant received a “\$40 monthly fee only as long as
15 a probationer remained on probation ... it couldn’t determine probation sentencing
16 matters impartially”).

17 Separate from partiality, the “claim preclusive effect ... does not hold
18 universally” to non-judicial proceedings. *Littlejohn v. United States*, 321 F.3d 915,
19 921 (9th Cir. 2003). Estoppel cannot apply where the procedures in the prior
20 proceeding “provided [a party] with neither the tools nor the opportunity to fully
21 litigate” the relevant issues. *Id.* at 923; *see Parklane Hosiery Co. v. Shore*, 439 U.S.
22 322, 332 (1979) (collateral estoppel should not apply if there are “procedural
23 opportunities available” in the second suit “that were unavailable in the first ... [and]
24 might be likely to cause a different result”); *Maciel v. Comm’r*, 489 F.3d 1018, 1023
25 (9th Cir. 2007) (same); *Staub v. Nietzel*, No. 22-5384, 2023 WL 3059081, at *6 (6th
26 Cir. Apr. 24, 2023) (estoppel does not apply where “an earlier action involved relaxed
27 rules of evidence, a system to quickly determine [claims], and concerned minimal
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1 amounts of damages”). Defendants’ cited authorities confirm that courts must
2 carefully consider the adequacy of procedures in prior proceedings. *See B & B*
3 *Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 158 (2015) (courts must ask
4 “whether the procedures used in the first proceeding were fundamentally poor,
5 cursory, or unfair”); *e.g.*, *Hansen v. Musk*, 653 F. Supp. 3d 832, 835 (D. Nev. 2023),
6 *aff’d*, 122 F.4th 1162 (9th Cir. 2024) (applying preclusion where parties exchanged
7 briefing and participated in a three-day evidentiary hearing with witness testimony,
8 examination, and cross-examination); *Patricia H. v. Berkeley Unified Sch. Dist.*, 830
9 F. Supp. 1288, 1301 (N.D. Cal. 1993) (applying preclusion to administrative hearing
10 affording rights to counsel, evidence, testimony, witnesses, rebuttal, and right to de
11 novo review before an administrative law judge).

12 Congress deliberately created IDR as an informal process to efficiently resolve
13 payment disputes without the need for legal counsel. IDR “is not an arbitration”;
14 rather, “IDR is—by statute—a highly-restricted process.” *Mod. Orthopaedics of NJ*
15 *v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *6
16 (D.N.J. Nov. 3, 2025). The parties are given “a single opportunity to provide the
17 referee with supporting documents and evidence ... there is no opportunity for
18 briefing, hearing, or appeal.” *Id.* IDR is precisely the kind of “prompt, inexpensive
19 determination of small claims” for which collateral estoppel is “wholly
20 inappropriate.” *See Staub*, 2023 WL 3059081, at *6.

21 **D. In the Alternative, Anthem Pleads a Claim for Vacatur (Count II).**

22 In the alternative to its common law and statutory claims, Anthem has also
23 asserted a claim for vacatur. Compl., ¶¶254-58 (Count II). Defendants argue that
24 Anthem’s grounds for vacatur do not satisfy the substantive requirements of 9 U.S.C.
25 § 10(a). MTD at 16-18. For the reasons stated in Section I.A.2, those arguments fail.

26 In addition, Defendants suggest that Anthem cannot seek “blanket vacatur” of
27 several thousand awards without alleging particularized facts concerning each of the
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1 “more than 6,000” individual IDR awards at issue. MTD at 18. But where, as here,
2 plaintiff alleges a scheme involving “hundreds or thousands” of misrepresentations,
3 Rule 9(b) requires only that the plaintiff plead “examples” of the fraud with the
4 requisite particularity. *See Almont*, 2015 WL 12778048, at *8. Defendants’ cited
5 authority does not prove otherwise.¹²

6 **II. Anthem States a Claim Under ERISA (Count III).**

7 The Complaint pleads a claim against Defendants under ERISA § 1132(a)(3),
8 which authorizes plan fiduciaries like Anthem to “enjoin any act or practice which
9 violates any provision of this subchapter[.]” In 2020, Congress adopted a new
10 provision—§ 1185e—to incorporate the NSA’s requirements into ERISA. Anthem
11 seeks to enjoin Defendants from filing fraudulent IDR disputes in violation of this
12 new provision.

13 Defendants argue that § 1185e includes the NSA’s Judicial Review Provision
14 and thus *implicitly* prohibits authorized parties from ever bringing a §1132 claim to
15 enjoin statutory violations in connection with IDR proceedings. Congress authorized
16 plan fiduciaries and the Secretary of Labor to seek an injunction against “**any**
17 **provision of this subchapter,**” including § 1185e. 29 U.S.C. §§ 1132(a)(3), (a)(5)
18 (emphasis added). If Congress had intended to carve out § 1185e violations from the
19 reach of § 1132, it would have said so expressly. Adopting Defendants’ interpretation
20 would produce an absurd result by simultaneously imposing substantive statutory
21 obligations on ERISA plans and providers but stripping the Department of Labor,
22 plan fiduciaries, and any other authorized party of the mechanism to enforce those
23 ERISA-based obligations.

24
25 ¹² In *Reach Air*, the court simply held that the plaintiff failed to plead a fraudulent
26 misrepresentation as to a single IDR award. 160 F.4th at 1121. And in *HaloMD CA*,
27 the court erroneously stated *in dicta*, without any supporting authority, that 9(b)
28 requires pleading fraud for every IDR award challenged but then noted that “[t]his
order does not rely on Rule 9(b)” as ground for dismissal. 2026 WL 982629, at *9.

1 In addition, a claim for a prospective injunction under § 1132(a)(3) in no way
2 implicates the Judicial Review Provision. Anthem’s ERISA claim does not require
3 the court to review whether any past IDRE determination was correct, substitute the
4 Court’s judgment for an IDRE’s eligibility ruling, or vacate any specific IDR award.
5 Instead, Count III seeks only a forward-looking injunction against Defendants’
6 ongoing conduct based on evidence that Defendants have knowingly submitted false
7 information to initiate IDR disputes. An injunction against a party’s future conduct
8 cannot be “judicial review of a determination of a certified IDR entity” within the
9 meaning of the statute.

10 Defendants’ invocation of the “specific governs general” canon fares no better.
11 Section 1132(a)(3) is the specific congressional mechanism for enjoining ERISA
12 violations against providers. The § 1185e judicial review provision is directed at
13 challenges to the IDRE’s selection of the payment determination. Because these
14 provisions address wholly different subjects—one concerns enforcement of ERISA
15 provisions, the other concerns reviewability of IDR payment determinations—there
16 is no conflict requiring the canon to resolve.

17 Finally, Anthem adequately alleges its fiduciary status under 29 U.S.C.
18 § 1002(21)(A). At the pleading stage, Anthem is not required to identify specific
19 ERISA plans. *See, e.g., Nutrishare, Inc. v. Connecticut Gen. Life Ins. Co.*, No. 2:13-
20 CV-02378-JAM-COMPLAINT, 2014 WL 2624981, at *3 (E.D. Cal. June 12, 2014)
21 (“Once the case is allowed to proceed to discovery, CIGNA would be required to
22 specifically identify the plans at issue.”); *UnitedHealthCare Servs. v. Team Health*
23 *Holdings, Inc.*, 3:21-cv-00364, 2022 WL 1481171, at *8 (E.D. Tenn. May 10, 2022)
24 (“The interests of judicial economy counsel that United be allowed to produce the
25 relevant documents for its ERISA claim in the normal course of discovery.”).¹³

26 _____
27 ¹³ Defendants’ sole authority to the contrary is *In re SmithKline Beecham Clinical*
28 *Lab’y, Inc. Lab’y Test Billing Pracs. Litig.*, which required plan fiduciaries to quote
exemplary language from the provisions of an administered plan at the pleading

1 A person qualifies as an ERISA fiduciary to the extent they exercise
2 “discretionary authority” over plan “administration” or “authority or control” over
3 plan assets. 29 U.S.C. § 1002(21)(A). Anthem’s Complaint alleges that ERISA-
4 governed self-funded plans delegate to Anthem discretionary authority to recover
5 overpayments; Defendants do not (and cannot) dispute this is sufficient to render
6 Anthem a fiduciary.¹⁴

7 Defendants’ argument that the Complaint references Anthem’s
8 overpayments—rather than ERISA plan losses—elevates form over substance.
9 Defendants acknowledge that the Complaint alleges Anthem is reimbursed by
10 ERISA plans for IDR awards, meaning those losses are ultimately borne by the plans.
11 MTD at 20. And the argument that “plans alone” control the disposition of their assets
12 fares no better: whether a plan requires Anthem to advance funds and seek
13 reimbursement, or to pay claims directly from plan assets, Anthem acts with plan
14 authority to recover any overpayment and thus seeks to recover plan funds as a
15 fiduciary.¹⁵

16 **III. Anthem States a UCL Claim.**

17 For the reasons stated in the accompanying Opposition to Defendants’ Motions
18 to Strike, Anthem pleads a viable UCL claim (Count I).

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21
22 stage. 108 F. Supp. 2d 84, 107 (D. Conn. 1999). In the 26 years since that decision,
no court has followed that authority.

23 ¹⁴ As to the administration of IDR proceedings, decisions such as determining offer
24 amounts in IDR proceedings require the exercise of judgment, not rote rule
25 application.

26 ¹⁵ In *IT Corp. v. Gen. Am. Life Ins.*, the Ninth Circuit found sufficient evidence of
27 fiduciary status precisely because the alleged fiduciary retained “final authority to
28 authorize or disallow benefit payments in cases where a dispute exists.” 107 F.3d
1415, 1420 (9th Cir. 1997).

1 **IV. Anthem Pleads a Claim For Declaratory and Injunctive Relief (Count IV).**

2 Defendants’ argument that declaratory and injunctive relief must be dismissed
3 along with the underlying claims fails for the same reasons discussed above. Because
4 Anthem adequately pleads its ERISA claim, this claim survives as well. *See McCoy*
5 *v. Alphabet, Inc.*, No. 20-CV-05427-SVK, 2021 WL 405816, at *13 (N.D. Cal. Feb.
6 2, 2021) (denying motion to dismiss independent claim for declaratory relief).¹⁶

7 **CONCLUSION**

8 Anthem respectfully requests that the Court deny Defendants’ Motions in their
9 entirety. And, in the event that the Court finds any claim inadequately pleaded,
10 Anthem should be afforded leave to remedy any deficiencies. *See Nat’l Council of*
11 *La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

12 Dated: June 12, 2026

CROWELL & MORING LLP

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28 ¹⁶ Anthem inadvertently included a request for damages in the Complaint but has not asserted a claim for which damages or other legal remedies are available.

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L.R. 11-6.1 CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 11-6.1, the undersigned, counsel of record for ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY and BLUE CROSS OF CALIFORNIA D/B/A ANTHEM BLUE CROSS, certifies that this brief, excluding the caption, the signature block, tables of contents and authorities, and any supporting documents, contains 6,992 words, which complies with the word limit of L.R. 11-6.1.

Dated: June 12, 2026

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