**UNITED STATES DISTRICT COURT**

**WESTERN DISTRICT OF KENTUCKY**
**OWENSBORO DIVISION**

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| UNITED HEALTHCARE SERVICES INC., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | CASE NO. 4:26-CV-60-DJH |
| | ) | |
| CONCORD COMPANY OF TENNESSEE, PLLC, | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |

**DEFENDANT CONCORD COMPANY OF TENNESSEE, PLLC'S MOTION TO DISMISS THE COMPLAINT**

Defendant Concord Company of Tennessee, PLLC, moves to dismiss Plaintiff United Healthcare Services Inc.'s Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) and 9(b) on the following grounds: (1) lack of subject matter jurisdiction under the No Surprises Act; (2) collateral estoppel; (3) a lack of plausible inference of fraud on the Complaint's face; (4) a failure to plead reliance; (5) a failure to plead proximate causation; and (6) a failure to plead with particularity.

In support of this Motion, Defendant submits the accompanying memorandum and tenders the accompanying proposed Order.

WHEREFORE, Defendant respectfully requests that this Court grant its Motion.

Respectfully submitted:

*/s/ Chad E. Wallace*
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**MEMORANDUM IN SUPPORT OF DEFENDANT CONCORD COMPANY OF TENNESSEE PLLC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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Defendant Concord Company of Tennessee, PLLC ("Concord" or "Defendant"), by and through its undersigned counsel, hereby moves the Court to dismiss the Complaint of Plaintiff United Healthcare Services, Inc. ("United" or "Plaintiff") pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b).

## PRELIMINARY STATEMENT

This case is a collateral attack on an arbitration award for $1,009.64 that United—the largest health insurer in the world with annual revenues of $447.6 billion—was directed to pay after it lost a No Suprises Act ("NSA") arbitration and two appeals but has yet to pay. United's Complaint tries to turn this solitary award, which is not even a rounding error on United's balance sheet, into a far-reaching declaratory judgment that United could then use to shield itself from paying any NSA arbitration awards that it unilaterally deems to be wrongly decided.

There are numerous grounds for dismissing the Complaint.

**Lack of Subject Matter Jurisdiction.** The sole basis for federal subject matter jurisdiction cited in the Complaint is the federal No Surprises Act. But the NSA expressly states that there can be no judicial review of an NSA arbitration award, except in a case that would justify vacating an arbitration award under the Federal Arbitration Act. The FAA's vacatur provisions clearly do not apply here, and, therefore, there is no basis for judicial review and no subject matter jurisdiction. Neither the NSA nor the FAA allow for declaratory judgments generally, or declaratory judgments that would affect other arbitration awards.

**Collateral Estoppel.** United fully and fairly litigated its contention that the $1,009.64 claim at issue here was ineligible under the NSA in the prior arbitration proceeding. In fact, it raised and lost that issue three times. Having lost three times in the exclusive, statutorily defined process, United now wants a fourth bite at the proverbial apple in this Court. But the doctrine of collateral estoppel is designed to prohibit re-litigation of previously decided issues. Applying

collateral estoppel here is particularly important since United is seeking a declaratory judgment that would act as a judicial shield against any NSA arbitration awards with which it disagrees. Simply put, United is seeking to gut the entire NSA arbitration process.

**No Plausible Inference of Fraud.** United thinks it is self-evident that Concord committed fraud and the NSA arbitrator erred in failing to credit United's claims of fraud. But applying "judicial experience and common sense," as the *Twombly-Iqbal* standard demands, makes it clear that there are no plausible fraud allegations. United is asking the Court to conclude that documents say things that they simply do not say. The most plausible explanation is that United did not prosecute its defense competently in the NSA proceeding and lost because it failed to carry its burden on the ineligibility defense.

**No Reliance.** The fraud claim also fails because there is no allegation that United relied on any representation made by Concord. To the contrary, United repeatedly disputed the issue of eligibility and lost it three times in the arbitration proceedings. In fact, no one relied on Concord's representation. The arbitrator specifically considered United's position and explicitly rejected it. That is not fraud; that is litigation.

**No Proximate Causation.** United attempts to explain away its litigation loss by complaining about the "motives" and lack of "objectivity" of the arbitrator, and the "objectively insufficient" appeals process created by the NSA. Complaint ¶¶ 83 and 93. But if those "sour grapes" allegations are to be believed, then they are intervening causes that break the causal chain between Concord's supposed "fraud" and United's supposed "injury."

**Failure to Plead Fraud with Particularity.** United pleads its fraud claim with sufficient particularity under Fed. R. Civ. 9(b) as to the $1,009.64 claim. But the relief that United seeks is not limited to that single claim. Instead, United contends that there are an untold number of

additional fraudulent acts. *See, e.g.,* Complaint ¶ 103. On this basis, United seeks a declaratory judgment that would shield itself from paying any current or future NSA arbitration awards that it unilaterally deems to be based on an eligible claim. But if Plaintiff wants relief as to any "fraudulent" claims other than the single $1,009.64 that it has pleaded with particularity, it must conform to Fed. R. Civ. P. 9(b) and plead with particularity every allegedly fraudulent claim for which it seeks relief.

For these reasons, as set forth more fully below, the Court should dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6).

## FACTUAL BACKGROUND

### A. Background to the No Surprises Act.

This case centers around the No Surprises Act, 42 U.S.C. § 300gg-111 ("NSA"), a federal statute that was enacted in 2020 "to protect consumers from surprise medical bills." Complaint ¶ 40. A "surprise" medical bill is an unexpected medical bill from an out-of-network provider that occurs because the patient's insurance company unilaterally decides to pay less than the provider charges, and the insurer's refusal to pay makes the patient responsible for the balance.

United was, surreptitiously, one of the prime forces behind the NSA. According to public reporting,[1] based on documents released after a 2021 trial in Nevada,[2] United worked behind the scenes to publish a study on surprise billing in the *New England Journal of Medicine*. United

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1 *See* Rose Adams, *UnitedHealthcare Guided Yale's Groundbreaking Surprise Billing Study*, The Intercept (Aug. 10, 2021), (the "Intercept Article").

2 The trial occurred in the matter *UnitedHealthcare Ins. Co. v. Fremont Emergency Services (Mandavia)*, 570 P.3d 107 (Nev. 2025). The jury found for the provider in that matter, and awarded $2.6 million in compensatory damages, as well as $60 million in punitive damages. The punitive damages award was subsequently reduced on appeal. *Id.* at 127.

provided Yale researchers with the data to perform the study, but asserted control throughout the process and retained the right to stop publication if United executives were unhappy with the results.[3] United then aided with promoting the study in the press, but demanded that United's role in the study be kept secret.[4] The study then became the impetus for the NSA:

> The paper's prestigious marquee and thorough dataset propelled the findings to the national stage, and the onslaught of media coverage soon caught attention on Capitol Hill. In 2020, Congress passed bipartisan legislation to ban surprise billing, citing the Yale study in its effort to investigate the practice. The bill, the No Surprises Act, was universally lauded as a necessary step to protect patients.[5]

Proving the adage that you should be careful what you wish for, United has now turned against the NSA, as vividly demonstrated by the Complaint in this case. The reason for this change of heart is obvious: United, and other insurers, are losing NSA arbitrations around 85% of the time. Complaint ¶ 46. Rather than looking at that lopsided win/loss record and concluding that it should change its business practices of underpaying medical providers like Concord, however, United has decided that the problem is with the statute itself and the federally certified arbitrators who conduct NSA arbitrations. According to United, the NSA: (1) has led to an "unforeseen volume of claim submissions" (Complaint ¶ 48); (2) utilizes federally certified arbitrators who "blatantly ignore evidence of ineligibility" and "routinely exceed their jurisdiction" (*id.* ¶ 49); (3) utilizes a "compensation structure" that "creates an incentive for IDREs to exceed their authority" (*id.* ¶ 86); and (4) utilizes an appeals process that is "objectively insufficient" (*id.* ¶ 93). United also questions the "objectivity and motives" of the IDRE arbitrators who have been certified by the federal Centers for Medicare and Medicaid

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3 *See* Intercept Article.
4 *Id.*
5 *Id.*

Services ("CMS") to conduct NSA arbitrations. *Id.* ¶ 82.

Rather than petitioning Congress to amend the very statute that United surreptitiously fought for, United is filing test cases—like this one—against healthcare providers with limited resources in hopes that some court somewhere will effectively amend the NSA to United's liking.

**B. NSA Arbitrations**

According to the Complaint, "[i]f an out-of-network provider disputes the initial payment received from a commercial health plan, the parties are first required to participate in a 30-business-day 'open negotiation' to try to resolve the dispute." *Id.* ¶ 43. "Should that fail, either party has four business days to commence IDR [*i.e.*, Independent Dispute Resolution], seeking a binding payment determination from a certified IDRE [*i.e.*, IDR Entity]." *Id.*

The Complaint describes the IDR process as follows:

> [T]he IDR process is a binding "baseball-style" dispute resolution. The NSA requires the provider and insurer to each submit a proposed reimbursement amount and explanation to the IDRE. The IDRE then selects one of the two proposed reimbursement amounts, taking into account various criteria. *Id.* ¶ 44.

The Complaint also describes two different ways of appealing an arbitration award if one of the parties feels that the IDRE erred in its decision. As to what will be referred to below as the "First Appeal Process," the "Departments' Technical Assistance details how errors in the NSA IDR process, including when IDREs rule that ineligible Medicaid and Medicare are eligible for the NSA IDR process theoretically can be corrected." *Id.* ¶ 93. That process "requires that the party raising the error first report it to the IDRE…who then decides if the error reported is of the type that permits reopening the dispute." *Id.* If the IDRE agrees that there is an error, "the IDRE then reports the error to the Departments [*sic*], who in turn must also determine if the error is

redressable by way of this process." *Id.* If it is, "the Departments [*sic*] then reopens the closed dispute…" *Id.* As to what will be referred to below as the "Second Appeal Process," the Complaint states that a party who has lost the arbitration can "file[] a complaint with the federal No Surprises Help Desk requesting that the IDRE's determination be overturned." *Id.* ¶ 77.

**C. The $1,009.64 Claim at Issue in This Case.**

The Complaint alleges that United lost an NSA arbitration to Plaintiff, who was awarded $1,009.64. *Id.* ¶ 74. United utilized both the First and Second Appeal Processes to contest the eligibility of the claim but was unsuccessful each time. *Id.* ¶¶ 77 and 93. United does not, however, allege that it has even paid the $1,009.64 award. Rather, United describes its "injury" as follows:

> Since FHAS determined the claim in favor of Defendant on September 29, 2025, Radix, on behalf of Defendant, has continually sought payment from United in an amount equal to FHAS's determination. Defendant, through Radix, has sent multiple 'urgent' emails to United, demanding payment, citing the IDR determination by FHAS, and threatening 'escalation to the Centers for Medicare & Medicaid Services (CMS) for enforcement action" in the event of non-payment." Complaint ¶ 95.

*See also* Complaint ¶ 102 ("United will suffer additional harm if it is required to pay the IDR award for this ineligible claim.").

## LEGAL ARGUMENT

### I. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FED. R. CIV. P. 12(b)(1).

The Complaint cites one—and only one—basis for federal subject matter jurisdiction: the No Surprises Act. *See* Complaint ¶ 9 ("This Court has federal question subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because resolution of the claims in this Complaint raises disputed and substantial questions under the NSA, a federal statute, and will require judicial interpretation of the NSA.").

The Complaint does not even cite a specific provision of the NSA that supposedly creates federal subject matter jurisdiction—because there is no provision that could plausibly be construed to do so. In fact, the NSA plainly says the exact opposite, stating that an IDR determination "shall ***not*** be subject to judicial review, except in a case [that would justify vacating the award under the Federal Arbitration Act]." 42 U.S.C. § 300gg-111(c)(5)(E)(i) (emphasis added). Because of this express statutory limitation on judicial review, federal courts have consistently held that the exclusive means to challenge an NSA IDR award is to seek vacatur under the FAA. *See, e.g., Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 40 F. 4th 271, 275 (5th Cir. 2025) ("*Guardian Flight I*") ("The only right of action provided [in the NSA] derives from the incorporated vacatur sections of…the FAA."); *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F. 4th 613, 620 (5th Cir. 2025) ("*Guardian Flight II*") ("[If a party] wish[es] to seek vacatur of [NSA] awards, they must do so through the FAA paragraphs explicitly incorporated for that purpose."); *Modern Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *8 (D.N.J. Nov. 3, 2025) ("[T]he only role contemplated for the federal courts in the NSA is the ability to vacate an award granted due to misconduct."); *Worldwide Aircraft Servs. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 WL 4226799, at *2 (M.D. Fla. Sept. 18, 2024) ("If no ground for vacatur exists, the arbitration award must be confirmed."). *But see GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield,* CV 22-6614 (KM) (JBC), 2023 WL 5815821, at *1 (D.N.J. Sept. 8, 2023) (confirming NSA Award against insurer), *PHI Health, LLC v. Optimum Choice, Inc.*, No. 1:25-cv-02320, 2026 WL 850453 at * 11, (D. Md. Mar. 27, 2026) (finding "a very narrow private right of action to convert a 'binding' IDR determination to a judgment if the obligated party does not comply with its statutory payment obligation.").

For this reason, the Court must look to the case law applying the FAA's vacatur provisions, and it is clear from that case law that the Complaint in this case should be dismissed. That body of case law begins with the Sixth Circuit Court of Appeals, which has repeatedly held that the FAA's vacatur provisions must be used sparingly and do not apply to claims similar to the claims made by Plaintiff in this case. For example, in *Corey v. New York Stock Exchange*, 691 F.2d 1205 (6th Cir. 1982), the plaintiff participated in a NYSE arbitration. *Id.* at 1207. The plaintiff subsequently sued the NYSE for damages, alleging wrongdoing in the arbitration. *Id.* at 1208. The Sixth Circuit rejected this attempt to circumvent the FAA's vacatur provisions, holding that "the federal Arbitration Act provides the exclusive remedy for challenging acts that taint an arbitration award." *Id.* at 1211-12. Because the "[a]llegations of wrongdoing raised by [plaintiff] in his complaint are squarely within the scope of section 10 of the Arbitration Act[,]" the plaintiff could not pursue damages. *Id.* Plaintiff could not "transform" his "impermissible attack into a proper independent direct action by…alleging the relief sought." *Id.* at 1213. *Accord In re Robinson*, 326 F.3d 767, 771 (6th Cir. 2003) ("[A]rbitration awards under the FAA are binding unless a motion to vacate or modify has been filed."). If a complaint asks a court to second-guess the validity of an arbitration result, or the arbitration process itself, it is an impermissible collateral challenge that must be dismissed. *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 908 (6th Cir. 2000) (affirming dismissal because the plaintiff's claims collaterally attacked the arbitration award).

The Sixth Circuit is not alone in insisting on fidelity to the FAA's vacatur provisions. The Fifth Circuit decision in *Gulf Petro Trading Co. v. Nigerian Nat'l Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008), is instructive. In that case, plaintiff alleged federal civil RICO claims and state fraud claims based on the defendants' conduct during an arbitration. *Id.* at 747. Specifically, plaintiff alleged that the defendants bribed the arbitrator and that the arbitrator had improper business

dealings with the defendants. *Id.* at 749. Relying on Sixth Circuit precedent, the Fifth Circuit rejected these collateral attacks, even where the bribery and corruption allegations were analytically "separate" from the arbitration's merits. *Id.* at 750. "Though cloaked in a variety of federal and state law claims," the court found that the "complaint amounts to no more than a collateral attack on the [arbitration award] itself" and was thus subject to dismissal. *Id.* In so holding, the court recognized that federal law bars most claims "alleging that wrongdoing had tainted the arbitration proceedings and caused unfair awards." *Id.* Notably, the plaintiff's "harm was not caused by the alleged acts of wrongdoing in and of themselves." *Id.* "Rather, it resulted from the impact that these acts had on the" arbitration award. *Id.* The court affirmed the dismissal for lack of subject-matter jurisdiction. *Id.* at 753.

The same analysis applies here. United is not alleging that it relied upon or was proximately injured by Concord's supposed "fraud." Rather, United is alleging that Concord's "fraud"—together with the improper "motives" and lack of "objectivity" of the NSA arbitrator (Complaint ¶ 83) and the "objectively insufficient" appeals process (*id.* ¶ 93)—led to an arbitration award with which it disagrees. This Court is not a forum for such a collateral attack. Earlier this month, a court in the Central District of California dismissed a similar NSA-based claim brought by insurer Anthem against multiple provider defendants due to lack of subject matter jurisdiction. *Anthem Blue Cross Life and Health Ins., Co. et al v. HaloMD LLC, et al.*, 8:25-CV-01467-KES, 2026 WL 982629, at *2 (C.D. Cal. Apr. 9, 2026).

The lack of subject matter jurisdiction is particularly acute as to United's claim for a declaratory judgment. The FAA's vacatur provisions do give a jurisdictional basis to attack a single arbitration award (based on grounds that do not apply here and were not even pled). But no one can seriously argue that the FAA's vacatur provisions can apply to untold numbers of arbitration awards that have not been identified and may not even have been rendered yet. Thus, even if there is subject

matter jurisdiction to entertain an attack on the unpaid $1,009.64 award, there is no serious argument for subject matter jurisdiction to entertain a demand for a declaratory judgment to attack countless unidentified awards. *See Anthem Blue Cross*, 2026 WL 982629 at *10 ("And if, for example, the district court entered a follow-the-law injunction that prohibited Defendants from making future false eligibility attestations, then Plaintiffs would be able to come back into court to request a contempt remedy for violations of such an injunction, a remedy that would require litigating whether the challenged attestation was false. These theories are all end runs around the NSA's limits on judicial review.")

For these reasons, the Court should dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

## II. UNITED IS COLLATERALLY ESTOPPED FROM RELITIGATING CLAIM ELIGIBILITY, AND THE COMPLAINT SHOULD THEREFORE BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(b)(6).

Collateral estoppel, or the doctrine of issue preclusion, bars the re-litigation of any issue that was previously decided by a tribunal of competent jurisdiction in a prior action between the same parties. *See Smith v. Lerner, Sampson & Rothfuss, L.P.A.*, 658 Fed. Appx 268, 275 (6th Cir. 2016). Sixth Circuit case law is clear that collateral estoppel applies where the issue was previously decided in arbitration. *See Amerisure Mut. Ins. Co. v. Swiss Reinsurance Am. Corp.*, No. 24-1492, 2025 WL 3094132, at *1 (6th Cir. Nov. 4, 2025) (applying collateral estoppel to prior arbitration proceedings); *W.J. O'Neil Co. v. Shepley, Bulfinch, Richardson & Abbott, Inc.*, 700 F. App'x 484, 489 (6th Cir. 2017).

Collateral estoppel applies where: (1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; (2) the issue was actually litigated and decided in the prior action; (3) the resolution of the issue was necessary and essential to a judgment on the

merits in the prior litigation; (4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and (5) the party to be estopped had a full and fair opportunity to litigate the issue. *See Bills v. Aseltine*, 52 F.3d 596, 604 (6th Cir. 1995).

The allegations in the Complaint make clear that United is trying to collaterally attack the arbitrator's determination of the eligibility issue. According to the Complaint, "[o]n August 5, 2025, United responded to the arbitration demand by attesting that the claim was "***not eligible for IDR under the NSA*** because this Member is enrolled in a Medicare plan." Complaint ¶ 71 (emphasis in original). The Complaint also acknowledges that the IDRE noted and specifically rejected Plaintiff's argument on this point:

> The IDRE noted that, "[t]he Non-Initiating Party [United] objected that the service(s) provided were not covered by No Surprises Act (NSA) guidelines" and "submit[ted] a list of which items and services included in the dispute were not covered under the No Surprises Act and, for each item or service listed, an explanation as to why it is not covered under the Surprises Act." Yet, the IDRE concluded that it ***"determined that the claim(s) are covered by NSA guidelines, and the objection was overruled."*** (emphasis added; brackets in original).

Complaint ¶ 76.[6]

On the face of the Complaint, all of the elements of collateral estoppel have been met. The eligibility issue that United raises in this case is identical to the issue it raised in the arbitration. The eligibility issue was actually litigated and decided in the arbitration. The

[6] Curiously, in Paragraph 75 of the Complaint, United alleges that: "The IDRE made no explicit determination that the claim was eligible for IDR resolution." But this allegation is directly contradicted by the following paragraph, which was quoted in full above, and which clearly demonstrates that the IDRE was aware of United's eligibility objection, and considered it, but "determined that the claim(s) are covered by NSA guidelines, and the objection was overruled." *Id.* ¶ 76. Given this obvious contradiction, the Court can and should reject the conclusory allegation in Paragraph 75 as implausible under *Twombly* and *Iqbal*.

resolution of the eligibility issue was necessary and essential to the judgment on the merits rendered by the arbitrator. United was, obviously, a party to the arbitration. And United had a full and fair opportunity to litigate the issue in the arbitration—including two appeals. Complaint ¶¶ 77 and 93. *See also* Complaint ¶¶ 71-76 (describing Plaintiff's efforts to litigate the eligibility issues in the arbitration). Thus, all of the requirements of the doctrine of collateral estoppel have been satisfied. *See Bills*, 52 F.3d at 604.

Plaintiff is obviously upset that it lost the arbitration, as well as the appeals. But this Court is not a court of appeals from arbitration proceedings or other courts. The doctrine of collateral estoppel protects this Court's already-busy docket from becoming the court of last resort for unsuccessful arbitration litigants.

## III. UNITED'S FRAUD-BASED CLAIMS SHOULD BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(b)(6) AND 9(b).

### A. United's Fraud Claims Fail Under the *Twombly-Iqbal* "Plausibility" Standard.

To prevail on a claim of common law fraud, a plaintiff must establish, by clear and convincing evidence that: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, he did so intentionally or recklessly; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reasonable reliance upon it***;*** and (6) the plaintiff suffered damage. *See Bennett v. MIS Corp.*, 607 F.3d 1076, 1100–01 (6th Cir. 2010).

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court established the "plausibility" pleading standard governing motions to dismiss under Fed. R. Civ. P. 12(b)(6). The Sixth Circuit has adopted and consistently applied this framework. *See, e.g., HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 611 (6th Cir.

2012); *Heinrich v. Waiting Angels Adoption Services, Inc.*, 668 F.3d 393, 403 (6th Cir. 2012); *United States ex rel. Bledsoe v. Cmty. Health Sys.*, 501 F.3d 493, 502 (6th Cir. 2007).

Courts in this Circuit construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true, but they are not required to credit legal conclusions couched as factual assertions. *HDC, LLC*, 675 F.3d at 611. Allegations that are merely "consistent with a defendant's liability" or that "permit the court to infer misconduct" are insufficient to constitute a plausible claim. *Id.* A complaint must contain enough "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Sixth Circuit courts have drawn a clear line between "plausible" allegations of wrongdoing and those that allege "the mere possibility of misconduct." *Heinrich*, 668 F.3d at 403. In order to satisfy the *Twombly-Iqbal* test of plausibility, the allegations "must be enough to raise a right to relief above the speculative level." *Id.* In making this inquiry, a court may properly draw upon its "judicial experience and common sense." *Twombly*, 550 U.S. at 570.

United's fraud theory is based on four key factual claims: (1) Concord committed fraud in submitting the $1,009.64 claim at issue to NSA arbitration; (2) the NSA arbitrator erred in ruling against United after it pointed out the supposed fraud in the NSA arbitration proceedings; (3) the NSA arbitrator and/or the Department erred in not correcting the arbitrator's error as part of the First Appeal Process; and (4) the Department erred in not correcting the arborator's error as part of the Second Appeal Process. On this basis, United seeks a declaratory judgment that would shield United from paying any NSA arbitration awards that it unilaterally deems to be based on an ineligible claim.

But a close examination of the Complaint's allegations surrounding each of these

contentions falls far short of creating a plausible inference of fraud consistent with the *Twombly-Iqbal* pleading standard. There simply is not enough "factual content that allows [this] court to draw the reasonable inference that the defendant is liable for" fraud. *HDC, LLC*, 675 F.3d at 611.

For example, the contention that Concord knew the $1,009.64 claim was ineligible for NSA arbitration is based on the following allegations:

> When a Medicare recipient receives medical care, they have to show the medical provider their insurance card. The card for the aforementioned patient ***would have looked similar to the following***…Because Concord has a relationship with Twin Lakes Medical Center to provide emergency services to admitted patients, Concord ***should*** have received the patient's insurance information from Twin Lakes Medical Center and, therefore, ***should*** have known that the patient was insured under a Medicare Advantage plan. Complaint ¶¶ 55-57 (emphasis added).

In other words, United's fraud claim rests on three suppositions: (1) that the patient produced his insurance card when he sought emergency treatment; (2) that the insurance card is "similar to" the one reprinted in the Complaint; and (3) that Concord "should have" received a copy of that card from a independent non-party to this litigation.

None of these suppositions are "plausible" under *Twombly* and *Iqbal*. They are, at best, speculative inferences that do not satisfy the pleading standard. *Heinrich*, 668 F.3d at 403. Drawing, as it is permitted to do, upon "judicial experience and common sense," *Twombly*, 550 U.S. at 570, the Court can easily find that no fraud was at play in these facts. Patients show up at emergency rooms without their insurance cards every day. The patient's insurance card (which United either cannot produce or has chosen not to produce) may or may not have been "similar to" (whatever that means) the sample United reprinted in the Complaint. Maybe Twin Lakes Medical Center "should have" given Concord a copy of the insurance card, but no bureaucratic organization in history is perfect or has ever done everything that it "should have" done. Benign

circumstances and innocent mistakes negate every inference of fraud United is trying to make.

United's reliance on the Provider Admittance Advice fares no better. According to United:

> With its payment, United sent Concord a PRA providing details on the patient, the patient's status as a member of a Medicare Advantage plan, the claim, and United's reimbursement…The PRA was printed on letterhead labeled UnitedHealthcare Medicare Solutions, indicating that it was a United-managed Medicare Advantage plan. The PRA also contained an "ineligible explanation code" explaining why United had paid the amount it did for this patient's services. The code in this case was 0888, which reflects, as stated on the PRA, that the patient was a Medicare patient ("MCARE LIMITING CHARGE [] DO NOT REMIT BILL [MEMBER]"). Complaint ¶¶ 61-63.

The document that United reproduced at Paragraph 61 does not live up to United's claims about it in the subsequent paragraphs. United claims that the PRA was "printed on letterhead labeled UnitedHealthcare Medicare Solutions." But those words appear nowhere on the document reproduced at Paragraph 61. United claims that the PRA explains that code "0888" means that the patient was a Medicare patient because it stated "MCARE LIMITING CHARGE [] DO NOT REMIT BILL [MEMBER]." But, again, the language "MCARE LIMITING CHARGE [] DO NOT REMIT BILL [MEMBER]" does not appear anywhere on the document reproduced at Paragraph 61. And even if that language did appear, both "MCARE LIMITING CHARGE [] DO NOT REMIT BILL [MEMBER]" and code "0888" are idiosyncratic codewords that United might use internally, but do not necessarily communicate to anyone outside of United that the patient was a Medicare patient. Code "0888" is *not* a universal insurance code. MassHealth, for example, uses a code "0888" in its admittance advice forms, but to MassHealth code "0888" means "DCN INVALID FOR ATTACHMENT CROSS-REFERENCE."[7] These

[7] *See* MassHealth**,** List of Explanation of Benefit (EOB) Codes Appearing on the Remittance Advice, https://www.mass.gov/doc/eob-codes-0/downloadv.

threadbare allegations do not plausibly allege any fraud by Defendant.

The same is true of United's allegations that the NSA arbitrator erred in ruling against United after it pointed out the supposed fraud in the NSA arbitration proceedings. The documentation that United provided to the NSA arbitrator is ambiguous—at best.

At Paragraph 71 of the Complaint, for example, United attaches an attestation that the claim was "not eligible for IDR under the NSA because this Member is enrolled in a Medicare plan." *Id.* ¶ 71. That attestation supposedly attached a copy of the PRA that was discussed above. *Id.* ¶ 72. If United did actually attach the PRA, then the submission suffers from the same defects discussed above, and the arbitrator could have reasonably discounted the submission because the PRA was ambiguous for the same reasons. But it is not even clear from the pleading that it was, in fact, the PRA that was attached. The document reproduced at Paragraph 71 of the Complaint shows that the supporting documentation that was attached was a ".xlsx" file, which is the file name extension for a Microsoft Excel spreadsheet file. The PRA that was reproduced at Paragraph 61 obviously was not a spreadsheet, and it is unclear how or why that document would be contained in a Microsoft Excel spreadsheet file. Whatever spreadsheet was actually attached has not been reproduced in the Complaint.

At Paragraph 73 of the Complaint, United alleges that on August 28, 2025, United sent an additional letter to the NSA arbitrator "reiterating that the claim was 'not eligible' for IDR adjudication." *Id.* ¶ 73. United supposedly "attached to that letter an image of the patient's health coverage details, and in fact highlighted, in yellow for the IDRE, that the patient was a Medicare patient." *Id.* Here again, the document reproduced at Paragraph 73 does not live up to what United says about it. The document reproduced at Paragraph 73 is merely a cover letter which states that the claim is "not eligible for IDR under the NSA because this Member is enrolled in a

Medicare [sic].” No additional supporting documentation appears in the Complaint.

The Supreme Court famously wrote in *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997), that “nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.” Similarly, nothing in law or logic requires an NSA arbitrator to find that a claim is ineligible based solely on the *ipse dixit* of United. Rather, the arbitrator could have reasonably concluded on the record pleaded in the Complaint that United failed to carry its burden to prove ineligibility. Rather than questioning the “objectivity and motives” of the IDRE arbitrator (Complaint ¶ 83), a more plausible explanation is that United did not prosecute its defense competently and failed to carry its burden on the ineligibility defense.

United’s contention that its two appeals were improperly denied fares no better. United acknowledges the First Appeal Process and claims it “already attempted” to utilize this method of appeal. United does not, however, provide any supporting documentation or state how the appeal was resolved. Given the insufficiency of the proofs submitted to the NSA arbitrator (discussed above), it cannot “plausibly” be assumed that the arbitrator and/or the Department made any error in denying the appeal. Similarly, as to the Second Appeal Process, United states that it “filed a complaint with the federal No Suprises Help Desk requesting that the IDRE’s determination be overturned.” *Id*. ¶ 77. United again fails to provide a copy of that complaint or even describe how it was disposed of by the Department. Given these barebones allegations, and the myriad of problems with United’s claims discussed above, it cannot “plausibly” be assumed that the Department made any error in denying the appeal.

United’s fraud allegations do not contain enough “factual content that allows [this Court] to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *HDC,*

*LLC*, 675 F.3d at 611. They are, at best, speculative inferences that do not satisfy the pleading standard. *Heinrich*, 668 F.3d at 403.

### B. United's Fraud Claims Fail Because United Did Not Rely on Concord's Supposed Misrepresentation.

As discussed above, one essential element of a fraud claim is that the plaintiff must have acted in reasonable reliance on defendant's misrepresentation. *See Bennett v. MIS Corp.*, 607 F.3d 1076, 1100–01 (6th Cir. 2010); *see also Clayton v. Heartland Res., Inc.*, 754 F. Supp. 2d 884, 899 (W.D. Ky. 2010) (Kentucky law requires "that the plaintiff relied upon the misrepresentation" to prove fraud). The Restatement (Second) of Torts § 537 (1977) reinforces that the plaintiff cannot recover unless they in fact rely upon the misrepresentation in acting or in refraining from action, and their reliance is a substantial factor in bringing about the loss.

The same principle applies to NSA awards. In *Anthem Blue Cross Life and Health Ins., Co. et al v. HaloMD LLC, et al.*, 8:25-CV-01467-KES, 2026 WL 982629, at *8 (C.D. Cal. Apr. 9, 2026), the Court ruled that health insurer Anthem could not vacate IDR determinations as the result of fraud where Anthem had contested the eligibility of the claims:

> As aptly put by the Sound Physicians Providers, by alleging that Plaintiffs knew about the false eligibility attestations and objected, "Anthem has pleaded itself out of court," at least as to vacatur based on fraud, because the "fraud" was known during the IDR and disclosed to the IDRE. As a result, the FAC's allegations, even if accepted as true, do not establish the kind of "fraud" that justifies vacatur under § 10(a)(1). Plaintiffs have not identified even one example of an IDR determination for which they could amend and allege that a Defendant made a false eligibility attestation based on facts that Plaintiffs did not know, and could not reasonably have known, before or during the IDR process.

United's fraud allegations fail for the same reasons. United does not claim that it relied upon the supposed misrepresentation in any way. Rather, it claims that: (1) Concord made a misrepresentation in filing the NSA arbitration demand; (2) ***United pointed out that supposed misrepresentation to the NSA arbitrator***; (3) the NSA arbitrator erroneously sided with

Concord; (4) ***United pointed out the supposed misrepresentation again in the First Appeal Process***; (5) the NSA arbitrator and/or the Department erroneously sided with Concord again in the First Appeal Process; (6) ***United pointed out the supposed misrepresentation again in the Second Appeal Process***; and (7) the Department erroneously sided with Concord again in the Second Appeal Process. Even if United could prove that the NSA arbitrator and the Department were wrong to side with Concord all three times in this process—which certainly has not been plausibly alleged in the Complaint as demonstrated in Section III-A, *supra*—United has not alleged that it relied upon the supposed misrepresentation in any way. To the contrary, United contested Concord's representation at every step in the process and lost at every step in the process.

### C. United's Fraud Claims Fail Because Concord Was Not the Proximate Cause of United's "Injury."

In addition to reliance, United must also prove causation. *See Clayton v. Heartland Res., Inc.*, 754 F. Supp. 2d 884, 899 (W.D. Ky. 2010) (alleged misrepresentation must not only have induced the recipient's reliance but must also have caused the recipient's loss). In this context, causation means legal or proximate cause (*id.*), and it is well settled that proximate cause is a distinct requirement for recovery in tort. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 466-67 (2006) (citing Restatement (Second) of Torts § 912 (1977)).

In evaluating proximate cause, courts look to the principle of foreseeability. *NOCO Co. v. OJ Com., LLC*, 35 F.4th 475, 483 (6th Cir. 2022). This is because plaintiff is only entitled to compensation for every wrong which was the natural and proximate result of the fraud. *Glock v. Carpenter*, 184 F. Supp. 829, 834 (E.D. Ky. 1960). The Sixth Circuit has explained the test as follows: "Was there an unbroken connection between the wrongful act and the injury, a continuous operation? [And] [d]id the facts constitute a continuous succession of events, so

linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury?" *Johnson v. Kosmos Portland Cement Co.*, 64 F.2d 193, 195 (6th Cir. 1933). Intervening acts break the causation chain and eliminate liability. *NOCO Co.*, 35 F.4th at 483. Put simply, for a wrong to constitute the proximate cause of an injury, "it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances." *Johnson*, 64 F.2d at 195.

The facts of *NOCO Co.* are instructive. NOCO sold batteries. *NOCO Co.*, 35 F.4th at 478. OJC sold NOCO's batteries on Amazon without permission. *Id*. NOCO filed a complaint with Amazon, who suspended OJC's account and privileges. *Id*. OJC in turn brought suit against NOCO for defamation, tortious interference with a business relationship, and a violation of the Ohio Deceptive Trade Practices Act. *Id*. at 482. The Sixth Circuit Court of Appeals, however, identified three significant intervening causes negating a finding of proximate cause as to OJC's claims: (1) another vendor filed a similar complaint against OJC; (2) Amazon conducted an independent investigation in support of its decision to suspend OCJ; and (3) OJC had the opportunity to prevent the alleged harm to itself. *Id.*

United's claim of injury based on Concord's supposed fraud is even more attenuated. After Concord filed the NSA arbitration, United had three separate opportunities to contest the eligibility of the claim and lost each time. Each time United lost was a separate intervening cause by a party other than Concord. And the Complaint admits as much. United lost before the arbitrator, according to the Complaint, because of the NSA's arbitrator's "motives" and lack of "objectivity." Complaint ¶ 83. That is an intervening cause. United then lost its two appeals, according to the Complaint, because the appeal process created by the NSA statute is

"objectively insufficient." *Id.* ¶ 93. That is also an intervening cause. United simply cannot allege that Concord's "fraud" was the proximate cause of its "injury" when so many intervening causes by non-parties broke the causal chain.

### D. United's Fraud Claims Are Not Pleaded with Particularity Pursuant to Fed. R. Civ. P. 9(b).

Fed. R. Civ. P. 9(b) provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." The Sixth Circuit has explained that "[t]he purpose undergirding the particularity requirement of Rule 9(b) is to provide a defendant fair notice of the substance of a plaintiff's claim in order that the defendant may prepare a responsive pleading." *Michaels Bldg. Co. v. Ameritrust Co., N.A.*, 848 F.2d 674, 679 (6th Cir. 1988). In order to comply with Rule 9(b), "a plaintiff, at a minimum, must 'allege the time, place, and content of the alleged misrepresentation on which he or she relied; the fraudulent scheme, the fraudulent intent of the defendants; and the injury resulting from the fraud.'" *Bledsoe*, 501 F.3d at 504 (quoting *Coffey v. Foamex L.P.*, 2 F.3d 157, 161-62 (6th Cir. 1993)).

Defendant admits that United has pleaded its fraud claim as to the $1,009.64 claim with appropriate particularity. If United's claim for relief ended with that $1,009.64 claim, Rule 9(b) would not be an issue. But United's claim for relief goes far beyond that. United implies that there are many more such claims at issue. *See, e.g.,* Complaint ¶ 103 ("To date, Concord and its affiliated entities have initiated more than six hundred and fifty NSA IDR disputes against United and are continuing to do so, including the ineligible and fraudulent Medicare claim described above."). On this basis, United seeks a declaratory judgment that would shield itself from paying any current or future NSA arbitration awards that it unilaterally deems to be based on an ineligible claim. But if United wants to litigate any claims other than the single $1,009.64

award that it has plead with particularity, it must conform to Fed. R. Civ. P. 9(b) and plead every allegedly fraudulent claim at issue in this case with particularity.

Even if United were correct that the $1,009.64 arbitration award was procured by fraud (and it is not correct), United cannot seek relief as to other supposedly fraudulent claims. Defendant must have a full and fair opportunity to litigate whether each of those other claims was, in fact, fraudulent. The first step to that full and fair opportunity is compliance with Rule 9(b). Instead, United's theory is, apparently, that if it proves one fraudulent claim, it is entitled to a declaratory judgment that would shield itself from paying any future NSA arbitration awards that it unilaterally deems to be based on ineligible claims. *See* Complaint at Prayer for Relief ¶ D (seeking a declaratory judgment that "IDR awards issues on unqualified items or services are non-binding and are not payable.").

For these reasons, United's fraud-based claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b).

## IV. UNITED'S CLAIMS SHOULD BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(b)(6) AND 9(b) FOR VIOLATING THE *NOERR-PENNINGTON* DOCTRINE.

The *Noerr-Pennington* doctrine initially arose in the context of efforts to petition the legislative and executive branches regarding the passage or enforcement of laws in antirust matters, but the Supreme Court has since applied the doctrine beyond the legislative and enforcement contexts. *See VIBO Corp. v. Conway*, 669 F.3d 675, 683-86 (6th Cir. 2012) (providing background on the *Noerr-Pennington* doctrine). The doctrine shields any effort to elicit action from government decision-makers, including administrative agencies, courts, and arbitrative bodies acting pursuant to federal laws. *See Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11 (1972). *See also Guadian Flight II*, 140 F.4th at 622-23 (concluding IDREs are protected by arbitral immunity for their roles in the IDR process).

Here, Concord's participation in the NSA arbitration is immunized by the *Noerr-Pennington* doctrine because the alleged harm stems from governmental action, not private conduct. The actual harm at issue is a governmental determination, the IDRE's decision, pursuant to legislative mandate, *i.e.*, the NSA. Concord's alleged attempts to influence the process is akin to the immunized conduct by the defendants in *Geomatrix, LLC v. NSF Int'l*, 82 F.4th 466 (6th Cir. 2023).

In *Geomatrix*, the plaintiff manufactured a type of septic system called a T&D system. *Id.* at 473-74. The plaintiff sought to obtain a certification from a private organization, the defendant, for plaintiff's T&D system. *Id*. at 474. This standard-setting certification was incorporated by many states. *Id*. Practically, most non-T&D systems obtained the certification from defendant, though it was relatively uncommon but not prohibited for a T&D system to apply. *Id*. In fact, at least 37 states required these systems to have the certification at issue. *Id*.

The plaintiff alleged that the defendant's agents began campaigning to have all T&D systems removed from consideration for the certification and placed in an entirely new category. *Geomatrix,* 82 F.4th at 474. The plaintiff further alleged that defendant teamed up with industry competitors and spread unfounded concerns about T&D systems that disparaged the efficacy of T&D systems warranting exclusion from the certification process. *Id*. at 474-75.

In evaluating the plaintiff's claims in *Geomatrix*, the Sixth Circuit adopted the analysis in *Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n*, 937 F. Supp. 435, 478 (E.D. Pa. 1996), to determine whether *Noerr-Pennington* immunity applied. The Sixth Circuit asked: "(1) what is the harm that the plaintiff alleges it suffered?; and (2) is that harm the proximate result of governmental action or private conduct?" *Id*. at 479.

In *Geomatrix*, the Sixth Circuit ultimately affirmed the lower court's finding that the

*Noerr-Pennington* doctrine immunized the defendants. *Id*. at 481-83. This is because the plaintiff's harm was the proximate result of governmental action, not private conduct. *Id*. The government was the ultimate regulator of the plaintiff's product, not the defendant, even though many states simply adopted the defendant's recommendations. *Id*. It was a mere coincidence and perhaps a nuisance to the plaintiff that it could not obtain a license because the government often deferred to the defendant's recommended standards (though it was not required to do so). *Geomatrix,* 82 F.4th at 481-83. The court reasoned, "[plaintiff] Geomatrix claims that it should have had access to certain states' markets once it received [defendant's] NSF certification; the fact that it did not means that an intervening act had occurred (*i.e.*, rejection by state regulators). The 'context and nature' of the conspiracy therefore demonstrates that [plaintiff] Geomatrix's injury primarily flows from the actions of state agencies…" *Id*. at 482.

The same analysis applies here. The principal harm that United alleges is an arbitration award that it believes was erroneously awarded to Concord because of an allegedly fraudulent act. This harm is inherently incidental to valid governmental action because it stems from a legislative mandate of the NSA. United does not even try to hide that its real complaint is with the NSA arbitration process itself. Concord is immunized because United's harm stems from governmental action (the NSA award), not Concord's statements to the NSA arbitrator.

## CONCLUSION

For these reasons, the Court should dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b).

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**CERTIFICATE OF SERVICE**

It is hereby certified that on April 15, 2026, the foregoing was electronically filed with the clerk of the court by using the ECF system which will send an electronic copy to all counsel of record. A copy will also be mailed to:

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