IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

UNITED HEALTHCARE SERVICES, INC., *Plaintiff*, vs. CONCORD COMPANY OF TENNESSEE, PLLC, *Defendant*.	Case No. 4:26-cv-00060-DJH **ORAL ARGUMENT REQUESTED**

UNITED HEALTHCARE SERVICES, INC.'S OPPOSITION TO CONCORD COMPANY OF TENNESSEE, PLLC'S MOTION TO DISMISS

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INTRODUCTION

This case is not what Concord Company of Tennessee, PLLC ("Concord") claims it to be. Concord frames this action as United's dissatisfaction with the outcome of a No Surprises Act ("NSA") Independent Dispute Resolution ("IDR") proceeding and an attempt to have this Court "amend" or "re-engineer" the NSA dispute resolution process. That framing fundamentally misrepresents United's claim. United is not asking this Court to revisit, reform, or second-guess the IDR process. United's claim is narrow and specific: Concord fraudulently initiated an IDR proceeding for a Medicare claim that was categorically ineligible for the IDR process from the outset. Concord's fraud occurred *before* any legitimate IDR process could begin, when Concord knowingly submitted a false attestation of eligibility on a claim that the NSA expressly excludes from its scope. United seeks to hold Concord accountable for illegally triggering the NSA's IDR process for the ineligible Medicare claim and for forcing United into a sham arbitration in which it never agreed to participate.

The facts are straightforward. Concord, through its agent Radix Health, submitted a single Medicare claim to the NSA IDR process and fraudulently attested that the claim was eligible. It was not. Medicare claims are categorically excluded from the NSA, and Concord knew it. United had already paid Concord pursuant to the Medicare fee schedule mandated by the Centers for Medicare & Medicaid Services ("CMS") and sent Concord a Provider Remittance Advice ("PRA") that expressly identified the patient as a Medicare member. If Concord wanted to challenge United's payment on the Medicare claim at issue, the appropriate forum would have been this Court. But Concord knew it would lose that case, so Concord submitted the claim to IDR anyway, attesting to its eligibility despite possessing documentation proving otherwise. The moment Concord submitted that false attestation, United was automatically forced to participate in a

proceeding that was statutorily inapplicable and nonconsensual and was forced to pay nonrefundable administrative fees for the privilege of defending against a sham arbitration.

Instead of defending its conduct, Concord asks this Court to immunize it from any accountability whatsoever for its fraudulent attestation. If Concord's arguments were accepted, providers would have free rein to flood the IDR system with ineligible claims, knowing that even when detected, they face no consequences.

The Court should deny Concord's Motion to Dismiss in its entirety for four reasons. *First*, the Court has subject-matter jurisdiction because this is not a "collateral attack" on an IDR determination, subject to the limited judicial review framework applicable to challenges of arbitration awards under the Federal Arbitration Act ("FAA"). United is not asking this Court to vacate the Independent Dispute Resolution Entity's ("IDRE") payment determination or to reconsider whether the IDRE selected the correct reimbursement amount. United is asking this Court to interpret the NSA and hold that Concord committed fraud when it submitted the ineligible Medicare claim to the NSA IDR process. *Second*, collateral estoppel does not bar United's claims because the IDRE lacked jurisdiction over the ineligible Medicare claim, and a jurisdictionally void proceeding cannot estop anyone. *Third*, United has adequately pleaded fraud with specificity, including reliance and proximate causation. *Fourth*, the *Noerr-Pennington* doctrine does not immunize Concord's fraudulent conduct because filing a knowingly false attestation to a private (inapplicable and nonconsensual) arbitral forum is not protected petitioning activity.

Concord should not be permitted to exploit the statutory scheme and process it abused to escape accountability for its misconduct. The Motion to Dismiss must be denied.

BACKGROUND

The facts here are simple. Concord, through its agent Radix Health ("Radix"), submitted a formal attestation—in violation of federal law—falsely certifying eligibility of a Medicare claim

for the NSA IDR process despite having received explicit documentation showing that the claim was ineligible. While United does not know what Concord and Radix told the IDRE during the course of the IDR process (because party submissions are not shared with the opposing party), it is undisputed that Concord, through Radix, persisted in pursuing the Medicare claim through the IDR process. Concord ultimately obtained a $1,123 windfall award from the IDRE on a claim for which Concord was actually entitled to only $113.36 under the CMS-mandated Medicare fee schedule. Compl. ¶¶ 59, 74. Concord does not dispute these facts in its Motion, and they paint an unmistakable picture of Concord's intentional fraud.

A. Concord Submitted An Ineligible Claim To The IDR Process

Concord billed United on April 10, 2025, for emergency services provided to ***a 67-year-old***[1] Medicare Advantage patient at Owensboro Health Twin Lakes Medical Center ("Twin Lakes Medical Center"). *Id.* ¶¶ 54, 58. United paid the claim on May 7, 2025, and sent Concord the PRA explaining the payment amount along with United's payment. *Id.* ¶ 61. The PRA expressly informed Concord that the patient was insured under a Medicare Advantage plan and detailed the amount United was obligated to pay under CMS's Medicare fee schedule. *Id.* ¶¶ 61-64.

Despite having been informed of the patient's Medicare coverage, Concord escalated the dispute to the IDR process, through its agent Radix, on August 1, 2025. *Id.* ¶ 67. When Concord, through its agent Radix, submitted the claim, it fraudulently attested that "the item(s) and/or service(s) at issue [we]re qualified item(s) and/or service(s) within the scope of the Federal IDR process." *Id.* ¶ 70. As soon as Concord, via Radix, initiated the IDR process, United was

[1] Based on age alone, Concord and Radix should have known that the patient was likely insured under a Medicare plan.

automatically forced to participate, including by paying administrative and IDRE fees, or risk a default determination. *Id.* ¶¶ 109, 112.

After Concord illegally initiated the IDR process, United attested via the IDR portal that the claim was "not eligible for IDR under the NSA because this Member is enrolled in a Medicare plan."[2] *Id.* ¶ 71. United also sent a letter directly to the IDRE, Federal Hearings and Appeals Services, Inc. ("FHAS"), on August 28, 2025, reiterating that the claim was "not eligible" for IDR adjudication because "this Member is enrolled in . . . Medicare," and attaching documentation confirming the patient's Medicare enrollment. *Id.* ¶ 73. Despite United's repeated objections, including the unambiguous PRA, the IDRE credited Concord's false attestation and ruled in Concord's favor, awarding the full $1,123. *Id.* ¶ 74. After the IDRE issued its determination, United filed a complaint with the federal No Surprises Help Desk requesting that the IDRE's determination be overturned, enclosing the PRA as proof of ineligibility. *Id.* ¶ 77. The No Surprises Help Desk has not responded to that request.

Concord attempts to recast the foregoing events as United having had the benefit of a "First and Second Appeal Process[]." Mot. at 6. Such labels appear nowhere in the NSA or the Departments' Technical Assistance guidance. Concord employs these made-up terms to create the

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[2] Concord's observation that the supporting documentation uploaded with United's August 5, 2025 attestation did not include the PRA and bore a ".xlsx" file extension is immaterial. Mot. at 16. The substance of United's attestation was that the claim was "not eligible for IDR under the NSA because this Member is enrolled in a Medicare plan." Compl. ¶ 71. That attestation was correct, and Concord does not dispute that the patient was, in fact, enrolled in a Medicare Advantage plan. More fundamentally, this case is not about United's submissions to the IDRE; it is about Concord's fraudulent conduct in knowingly submitting an ineligible Medicare claim to the NSA IDR process in the first instance. Concord's attempt to shift focus to the file type of a document United transmitted to the IDRE is a transparent effort to distract from its own misconduct. Regardless of what file format accompanied United's attestation to the IDRE, the Complaint plainly alleges (and Concord does not deny) that Concord received the PRA, which was printed on UnitedHealthcare ***Medicare Solutions*** letterhead and contained the ineligible explanation code 0888 ("MCARE LIMITING CHARGE [] DO NOT BILL [MEMBER]"). *Id.* ¶¶ 61-65.

false impression that United received meaningful, multilayered review. An "appeal" is "[a] proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal." Appeal, BLACK'S LAW DICTIONARY (12th ed. 2024). Here, no "higher authority" reconsidered the eligibility decision. What Concord labels the "First Appeal Process" is merely a toothless and informal error-correction mechanism contemplated by the Departments' Technical Assistance guidance, in which the same IDRE that made the original error decides whether to acknowledge it. Compl. ¶ 93. And what Concord calls the "Second Appeal Process" is United's complaint to the federal No Surprises Help Desk. *Id.* ¶ 77. Neither mechanism provides the hallmarks of appellate review. There was no independent tribunal, no briefing, no evidentiary hearing, no reasoned decision, and no binding reversal authority.

While United availed itself of both error-correction processes, nothing has come of either. *Id.* ¶¶ 77, 93. The IDRE's jurisdictionally void award remains ostensibly binding. *See id.* ¶ 95. United was injured the moment Concord submitted the false attestation triggering the inapplicable and nonconsensual IDR process on an ineligible claim, forcing United to pay nonrefundable administrative fees and participate in a sham proceeding to guard against Concord's efforts to abscond with more taxpayer dollars than permitted under CMS's Medicare fee schedule. *Id.* ¶¶ 102, 108-09. The inadequacy of these post-hoc administrative steps confirms that United has no adequate remedy without judicial relief from this Court.

B. Concord's Fraud Is Not An Isolated Incident, And Providers' Systemic Abuse Of The NSA IDR Process Is Thwarting Congressional Intent

Congress had two goals when it adopted the NSA: to protect patients from surprise medical bills and to lower health care costs. The Congressional Budget Office determined the IDR process would reduce federal deficits by approximately $17 billion and reduce premium rates by 0.5 to 1

percent. *See* CBO Estimate for Divisions O Through FF of H.R. 133, Consolidated Appropriations Act, 2021 (Jan. 14, 2021), https://www.cbo.gov/system/files/2021-01/PL_116-260_div%20O-FF.pdf (last visited Apr. 27, 2026). The House Report accompanying the NSA found that surprise billing arose from a "failure in the health care market, which causes providers—particularly in certain specialties—to have little or no incentive to contract to join a health plan's network." H.R. REP. NO. 116-615, at 53 (2020). The Report further noted that "[t]hese circumstances enable some providers to charge amounts for their services that exceed the marginal cost of producing those services," resulting in "compensation far above what is needed to sustain their practice." *Id.*

Congress assumed (evidently incorrectly) that providers would act in good faith by submitting only qualified claims to the NSA IDR process. Unfortunately, nearly one in five claims submitted to IDR is ineligible. Compl. ¶ 49. And when health plans spend the time and resources to try to convince an IDRE to properly exclude ineligible claims, the odds of success are alarmingly small. *See* Am. Health Ins. Plans & Blue Cross Blue Shield Ass'n, *New AHIP/BCBSA Survey Finds Providers are Flooding IDR System with Ineligible Disputes*, https://ahiporg-production.s3.amazonaws.com/documents/202510_AHIP_IB_No_Surprises_Act_Survey51.pdf (last visited Apr. 27, 2026).

Concord's conduct is part of a broader pattern of systemic abuse of the IDR process calculated to overwhelm IDREs with volume, knowing that some ineligible claims will slip through and yield windfall recoveries that dwarf the occasional detection and rejection. The economics of this scheme are straightforward: if even a fraction of fraudulent claims succeed, the resulting awards more than compensate for any losses on the ineligible claims that are rejected. Submitting ineligible claims flouts the intended purpose and reach of the NSA and allows

providers like Concord to collect windfall awards, the antithesis of what Congress intended in enacting the NSA.

Providers' abuses of the NSA IDR process have already added at least $5 billion to overall health system costs. Compl. ¶ 48. Here, Concord's fraud resulted in an improper award of $1,123 on an ineligible Medicare claim for which Concord was entitled to only $113.36. If the Court accepts Concord's arguments, Concord will continue to abuse the NSA IDR process at the expense of the Medicare program and U.S. taxpayers.

ARGUMENT

I. THIS COURT HAS SUBJECT-MATTER JURISDICTION OVER UNITED'S CLAIMS

The Court has subject-matter jurisdiction because United's claims fall outside the NSA's judicial review limitations and raise substantial, disputed questions of federal law.[3] Concord contends that the NSA's limitation on judicial review bars this Court from hearing United's claims, and that United's "exclusive" remedy is to seek vacatur under the FAA. Mot. at 6-10. But

[3] Though Concord's subject-matter jurisdiction arguments revolve solely around whether judicial review is available outside of a claim for vacatur (it is), it is worth noting United's fraud claim necessarily raises substantial, disputed questions of federal law that require judicial construction of the NSA, satisfying the test for federal question jurisdiction set forth in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005). Under *Grable*, "federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013). United's claims satisfy each element. The federal issues are: "necessarily raised" because United's claims cannot be adjudicated without construing the NSA's scope and effect; "actually disputed" because, among other disputes as to the meaning and effect of the NSA, the parties disagree as to whether this Court may review an award procured through a provider's false attestation of eligibility on a claim that was never within the IDR system's jurisdiction; and "substantial" because the case presents nearly pure questions of law with broad precedential significance. In addition, exercising jurisdiction will not disrupt the federal-state balance because this case presents discrete, important questions about a federal statutory scheme that this Court can "settle[] once and for all." *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 700 (2006).

Concord's argument assumes an underlying valid IDR proceeding on an eligible claim. Indeed, Concord's argument applies only when a party seeks to challenge an IDR payment determination, meaning, the amount an IDRE awards on an eligible claim. United is ***not*** challenging the IDRE's payment determination. United challenges Concord's fraud in initiating the IDR process on a Medicare claim that was never eligible for IDR in the first place. This is an independent tort claim, not a collateral attack on an arbitration award, and the NSA's judicial review limitation does not bar it.

Because United is not seeking review of the IDRE's *payment determination*, the FAA's limitations on judicial review do not apply to United's claims. Indeed, United *agrees* with Concord that the proper avenue to challenge *payment determinations* on *eligible, properly submitted* IDR claims is to seek vacatur under the incorporated provisions of the FAA. But this case does not concern a properly submitted, eligible commercial claim, for which an award was issued. Here, the Medicare claim at issue was *categorically excluded* from the IDR process by statute. *See* 42 U.S.C. § 300gg-111(c)(1); 45 C.F.R. § 149.510(a)(1); *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties* at 3 (June 2025), https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf (last visited May 5, 2026). In other words, United's claim cannot be subject to the NSA's limitations on judicial review because the claim at issue was never properly subject to the NSA IDR process. United's fraud claim is not a backdoor challenge to the IDRE's payment determination for which this Court lacks jurisdiction; it is a direct challenge to Concord's *pre-arbitration misconduct*.

The cases Concord cites are inapposite because they involved plaintiffs challenging arbitration proceedings on claims that were *undisputedly within the arbitrator's jurisdiction*. In *Corey v. New York Stock Exchange*, 691 F.2d 1205 (6th Cir. 1982), the plaintiff participated in an

NYSE arbitration *on a claim within the arbitrator's jurisdiction* and then sued for damages arising from alleged wrongdoing during the arbitration itself. *Id.* at 1207-08. The Sixth Circuit held that the FAA "provides the exclusive remedy for challenging acts that taint an arbitration award" because the plaintiff's "[a]llegations of wrongdoing . . . in his complaint [we]re squarely within the scope of section 10 of the Arbitration Act." *Id.* at 1211-13. Similarly, in *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906 (6th Cir. 2000), the plaintiff "collaterally attack[ed] the arbitration award" by seeking to relitigate the merits of a dispute that was *properly before the arbitrator*. *Id.* at 908. And in *Gulf Petro Trading Co. v. Nigerian National Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008), the plaintiff alleged bribery of an arbitrator *who had jurisdiction over the underlying dispute*. *See id.* at 749. In each case, the underlying claim was undisputedly eligible for arbitration, and the plaintiffs' injuries arose from conduct *during* the arbitration on eligible claims.

Even if the NSA's judicial review limitation applied here (it does not, because the claim was never eligible for IDR), that limitation extends only to *payment determinations*, not to independent fraud claims challenging a provider's pre-arbitration misconduct. The statute provides that IDR payment determinations "shall not be subject to judicial review" except on the narrow grounds specified in the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Critically, the statute's limitation on judicial review appears in a subsection titled "*Payment determination*." Had Congress intended to preclude judicial review of all aspects of the IDR process—including fraud claims based on false eligibility attestations—it could easily have done so. Instead, Congress limited the bar on judicial review to only one type of IDRE determination: the proper payment amount for covered services. Because United challenges Concord's conduct in *initiating* the IDR

process through fraud, rather than the merits of any payment determination, the NSA's judicial review limitation has no bearing on this case.

For these reasons, Concord's reliance on *Anthem Blue Cross Life & Health Insurance Co. v. HaloMD LLC*, No. 8:25-cv-01467-KES, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026), is unavailing. Mot. at 9-10, 18. In *Anthem*, the plaintiff-insurers brought federal RICO and ERISA claims against ten defendants and explicitly sought to "vacate [the] arbitrator's award[s] under the FAA." 2026 WL 982629, at *6. The court analyzed whether the plaintiff-insurers' allegations satisfied "the substantive requirements for claiming vacatur under 9 U.S.C. § 10(a)(1) or (4)." *Id.* at *9. That is not this case. United has not brought RICO or ERISA claims, and United does not seek vacatur of the IDRE determination. United brings a state-law fraud claim based on Concord's pre-arbitration misconduct in submitting a knowingly false attestation of eligibility. The *Anthem* court's analysis of the FAA's vacatur provisions is therefore inapplicable.

Congress understood that providers might abuse the IDR process and included an express fraud exception. Under the NSA, an IDR determination "shall be binding" on the parties only "in the absence of a fraudulent claim or evidence of misrepresentation." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). This fraud exception necessarily contemplates that courts will adjudicate fraud claims arising from the IDR process; otherwise, the exception would be meaningless. If Concord's interpretation were correct—that the NSA bars all judicial review except through FAA vacatur, and that fraud claims cannot be brought outside that narrow framework—then the fraud exception would serve no purpose. Congress does not include exceptions that it intends to be unenforceable. *See Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 257 (6th Cir. 2020) (applying the canon against surplusage). By including the fraud exception, Congress recognized that the finality of IDR awards must yield when a party has engaged in fraud

or misrepresentation. United's claim falls squarely within the scope of conduct Congress anticipated and preserved for judicial review.

II. COLLATERAL ESTOPPEL DOES NOT BAR UNITED'S CLAIMS

Collateral estoppel does not bar United's claims for a threshold reason: the IDRE lacked jurisdiction over the ineligible Medicare claim, and a decision issued without jurisdiction cannot be given preclusive effect. Concord's argument that United "fully and fairly litigated" the eligibility issue and "raised and lost that issue three times" misunderstands both the nature of the IDR process and the legal requirements for issue preclusion. The doctrine of collateral estoppel applies only when the party against whom estoppel is sought "had a full and fair opportunity to litigate the issue in the prior proceeding." *Bills v. Aseltine*, 52 F.3d 596, 600 (6th Cir. 1995) (citing *Detroit Police Officers Ass'n v. Young*, 824 F.2d 512, 515 (6th Cir. 1987)). Concord cannot satisfy these requirements. Because the claim at issue was a Medicare claim, and thus categorically excluded from the NSA IDR process, the IDRE had no jurisdiction to render any determination on it. Concord's collateral estoppel argument thus fails at the threshold: a jurisdictionally void proceeding cannot estop this litigation.

Even if the IDRE's determination were not jurisdictionally void, collateral estoppel still fails because the IDR process does not satisfy the fundamental requirements for issue preclusion. Collateral estoppel requires that: (a) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding; (b) determination of the issue must have been necessary to the outcome of the prior proceeding; (c) the prior proceeding must have resulted in a final judgment on the merits; and, as mentioned, (d) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding. *Bills*, 52 F.3d at 600. Concord cannot satisfy these requirements.

Here, the eligibility question was not "actually litigated" or "necessarily decided" in any meaningful sense. *Amerisure Mut. Ins. Co. v. Swiss Reinsurance Am. Corp.*, 2025 WL 3094132, at *3 (6th Cir. Nov. 4, 2025) (explaining that the issue must have been raised, contested, submitted, and determined in the prior proceeding). And, most importantly, United did not have a "full and fair opportunity to litigate." *Cf. W.J. O'Neil Co. v. Shepley, Bulfinch, Richardson & Abbott, Inc.*, 700 F. App'x 484, 492-93 (6th Cir. 2017) (holding that courts must consider whether the party against whom estoppel is sought "actively participated in the arbitration hearing," "enjoyed representation from counsel," "presented opening and closing statements," engaged in discovery, and examined witnesses). The IDR process is not an adversarial proceeding. There is no discovery, no evidentiary hearing, and no opportunity for cross-examination. The IDRE does not issue findings of fact or conclusions of law. Instead, the IDRE conducts a baseball-style arbitration in which it selects one of two proposed payment amounts. The IDRE's decision contains no reasoning, no explanation, and no analysis of the eligibility issue. Unlike the 18-month arbitration with extensive briefing and hearings in *Amerisure*, or the 24-day arbitration compiling 2,876 pages of testimony and 254 exhibits in *Central Transport, Inc. v. Four Phase Systems, Inc.*, 936 F.2d 256, 258 (6th Cir. 1991), the IDR process here produced nothing from which one could conclude that the eligibility question was "necessarily decided" after meaningful adversarial testing. Concord's reliance on these cases actually undercuts its position: those cases involved robust arbitration proceedings with procedural hallmarks that the IDR process entirely lacks.

Moreover, what Concord labels "two appeals" are nothing of the kind: the "First Appeal Process" is merely an informal error-correction mechanism where the same IDRE that made the original error decides whether to acknowledge it, and the "Second Appeal Process" is a complaint to the federal No Surprises Help Desk—neither involves an independent tribunal, briefing, hearing,

or binding reversal authority. Compl. ¶¶ 77, 93. Concord's argument that United "raised and lost" the eligibility issue "three times" fundamentally misconstrues the IDR process.

The IDR process's structural incentives further undermine any argument for preclusion. IDREs are compensated only when they resolve disputes on the merits. *Id.* ¶ 85. The resulting financial structure creates an incentive for IDREs to accept and decide cases rather than dismiss them on eligibility grounds. *Id.* ¶ 86. As the Complaint alleges, "IDREs are only compensated when they resolve a claim on the merits. If an IDRE rejects a claim because it is ineligible under the NSA, they receive no compensation on that claim." *Id.* ¶ 85 (footnote omitted). Given this perverse incentive structure—which Congress evidently did not anticipate—the notion that IDRE determinations should preclude judicial review of Concord's fraudulent conduct is at odds with the purpose of the collateral estoppel doctrine, which is to protect the finality of decisions reached through fair and reliable procedures. Here, the IDRE's determination was neither fair nor reliable but rather was the product of a system in which the adjudicator has a financial stake in accepting even ineligible claims.

For all of these reasons, the IDRE's determination has no preclusive effect, and collateral estoppel does not bar United's claims.

III. UNITED HAS ADEQUATELY STATED A VIABLE CLAIM FOR COMMON-LAW FRAUD

United has adequately stated a claim for common-law fraud because it has pleaded (a) a material misrepresentation; (b) which is false; (c) known to be false or made recklessly; (d) made with inducement to be acted upon; (e) acted in reliance thereupon; and (f) causing injury. *Corder v. Ethicon, Inc.*, 473 F. Supp. 3d 749, 762 (E.D. Ky. 2020) (citing *United Parcel Serv. Co. v. Rickert*, 996 S.W.2d 464, 468 (Ky. 1999)). Concord's arguments to the contrary—that United has

not pleaded plausibility under the *Twombly-Iqbal* standard, reliance, proximate causation, and particularity under Rule 9(b)—are each without merit.

A. United's Complaint Satisfies The *Twombly-Iqbal* Plausibility Standard

United's Complaint easily satisfies the *Twombly-Iqbal* plausibility standard because its detailed allegations "state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and the Complaint "pleads factual content that allows the court to draw the reasonable inference that [Concord] is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Here, the Complaint alleges with specificity that (a) the patient was a 67-year-old Medicare Advantage enrollee, Compl. ¶ 54; (b) Concord provided emergency medical services to this patient on April 4, 2025, *id.*; (c) United paid Concord the CMS-mandated amount of $111.10 and sent Concord a PRA identifying the patient as a Medicare Advantage plan member, *id.* ¶¶ 61-64; (d) despite receiving the PRA, Concord, through its agent Radix, initiated an IDR dispute on August 1, 2025, falsely attesting that the claim was "within the scope of the Federal IDR process," *id.* ¶¶ 67, 70; and (e) the IDRE issued an award of $1,123 in Concord's favor, *id.* ¶ 74. These are not speculative inferences. They are detailed factual allegations that, taken as true, establish a plausible inference that Concord knowingly submitted a false attestation.

Concord's attempt to recast factual disputes about the documentation in United's complaint as a failure of plausibility conflates the standard at the pleading stage with the evidentiary burden at trial. *See Iqbal*, 556 U.S. at 678 (the plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully," but it "is not akin to a 'probability requirement'"). Concord contends that the "most plausible explanation" is that United did not submit documentation to "prosecute its defense competently" and that the IDRE and Departments properly denied United's challenges. Mot. at 2, 17. But this argument improperly asks the Court to weigh competing inferences at the pleading stage, which *Twombly* and *Iqbal* do not permit. At this stage, the Court

must accept United's well-pleaded factual allegations as true and draw reasonable inferences in United's favor. *Iqbal*, 556 U.S. at 678-79. The Complaint alleges, with specificity, that (1) the patient was a Medicare Advantage enrollee; (2) Concord received a PRA expressly identifying the patient as a Medicare member; (3) despite this knowledge, Concord attested that the claim was "within the scope of the Federal IDR process"; and (4) Medicare claims are categorically excluded from that process. Compl. ¶¶ 54, 61-64, 70. These allegations, taken as true, support a plausible inference that Concord knowingly submitted a false attestation. Concord's alternative theory, that Concord, despite receiving explicit documentation of Medicare status, innocently misunderstood the claim's eligibility, is a factual defense to be tested through discovery, not a basis for dismissal at the pleading stage.

B. United Has Adequately Pleaded Reliance

United has adequately alleged reliance. Concord's principal argument is that United cannot show reliance because United "knew" the claim was ineligible and disputed eligibility at every stage. Mot. at 18-19. This argument inverts the law and, if accepted, would immunize every provider who submits a fraudulent attestation, since insurers necessarily recognize when a claim is ineligible for IDR. Under Concord's theory, a fraudster is rewarded for lying so long as the victim recognizes the lie—and if the insurer fails to alert the IDRE of the lie, the insurer would be faulted for causing its own harm. There is no path to a fraud claim under Concord's circular logic, and that absurd result is not what Congress intended when it expressly provided that IDR awards are binding only "in the absence of a fraudulent claim or evidence of misrepresentation." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).[4]

[4] "[C]ourts should not construe a statute to 'produce an absurd result that we are confident Congress did not intend.'" *United States v. Fitzgerald*, 906 F.3d 437, 447 (6th Cir. 2018) (quoting *United States v. Underhill*, 813 F.2d 105, 112 (6th Cir. 1987)). Even if Concord's theory did not

United's participation in the IDR process was not voluntary reliance on the truth of Concord's attestation.[5] Once Concord's agent Radix submitted the false attestation, United was forced into an inapplicable and nonconsensual arbitration proceeding. United (a) was automatically required to pay an administrative fee for the ineligible claim, and (b) had no choice but to participate in the IDR process or face default. Compl. ¶ 109. And once the IDRE exceeded its jurisdiction and issued its improper determination, United was ostensibly bound by the outcome. The fact that the award is ostensibly binding, compelling United to either pay or sue, makes Concord's fraud actionable.

C. United Has Adequately Alleged Proximate Causation

United has adequately alleged that Concord's fraud was the proximate cause of United's injuries. Concord's false attestation of eligibility was both the but-for cause and the proximate cause of United's harm. But for Concord's submission of the ineligible claim with a false attestation, the IDR process would never have been initiated, United would never have been forced to participate, and United would not have been forced to pay the administrative and IDRE fees on the ineligible claim.

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yield such an absurd result, justifiable reliance is a factual issue rarely suitable for resolution on a motion to dismiss. *Yung v. Grant Thornton, LLP*, 563 S.W.3d 22, 47 (Ky. 2018) ("[W]hether reliance is justified (or as sometimes stated, reasonable) is a question of fact in all but the rarest of instances.").

[5] Concord's reliance on *Anthem Blue Cross Life & Health Insurance Co. v. HaloMD LLC*, No. 8:25-cv-01467-KES, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026), is inapposite. Mot. at 18. In *Anthem*, the court addressed vacatur under section 10(a)(1) of the FAA, which requires fraud that "procured" the arbitration award. 2026 WL 982629, at *6. The court reasoned that where the insurer knew of and disclosed the alleged fraud to the IDRE, the fraud could not have "procured" the award because the IDRE was aware of it. *Id.* at *7-8. But United does not seek vacatur. United brings an independent common-law fraud claim, which is governed by different elements and does not require that the fraud have been concealed from the adjudicator.

Concord's proximate causation argument rests on an internal contradiction in its own motion: Concord simultaneously argues that United lost on the eligibility issue because of the IDRE's and Departments' erroneous decisions (implying United had valid arguments), while also arguing that these decisions were correct and United simply failed to convince the IDRE otherwise (implying Concord's attestation was not fraudulent). Mot. at 17, 19-21. Concord cannot have it both ways. If the IDRE and Departments made errors, those errors flowed directly from Concord's fraud—they are consequences, not intervening causes. And if Concord's attestation was correct, discovery will reveal there was no fraud. But at the pleading stage, United need only plausibly allege that Concord's fraud was the proximate cause of its injury—which it has.

Concord's reliance on *NOCO Co. v. OJ Commerce, LLC*, 35 F.4th 475 (6th Cir. 2022), is misplaced. Mot. at 19-20. In *NOCO*, the Sixth Circuit identified three independent intervening causes: (1) a separate complaint by an unrelated third party, (2) an independent investigation, and (3) the plaintiff's own failure to submit adequate documentation. 35 F.4th at 482-86. Each of those intervening causes was independent of the defendant's conduct and could have, standing alone, produced the plaintiff's injury. Here, there is no independent intervening cause. The inapplicable and nonconsensual IDR proceeding was not independent of Concord's fraud; rather, it was the direct and foreseeable consequence of it. Concord submitted a false attestation, the IDRE credited that attestation, and United was forced to participate in the inapplicable and nonconsensual arbitration proceeding, and to pay administrative and IDRE fees to boot. The very purpose of Concord's false attestation was to trigger the NSA IDR process for an ineligible Medicare claim. And the IDRE, relying on Concord's false attestation, exceeded its statutory jurisdiction exactly as Concord intended. There was no "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). Nor do the post-determination administrative processes Concord mislabels as "appeals" constitute intervening causes. Those processes were themselves triggered by the IDRE's jurisdictional overreach, which in turn was triggered by Concord's fraud. They are links in the same causal chain, not independent breaks in it. And, in any event, none of the post-determination administrative processes provide United a path to recoup the administrative fees it was forced to incur as a result of Concord's conduct.

Concord cites *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), in support of its proximate cause arguments, Mot. at 19, but that case supports United's position, not Concord's. In *Anza*, the Supreme Court held that the plaintiff's injury was too attenuated because the causal chain ran from the defendant's tax fraud to a price reduction to the plaintiff's lost customers, with multiple independent factors potentially accounting for the losses. 547 U.S. at 458-59. Here, the causal chain is far more direct: Concord submitted a false attestation, the IDRE credited it, and United was forced to pay administrative and IDRE fees. Compl. ¶¶ 70, 74, 102. There are no independent factors that account for United's injury, no risk of duplicative recoveries, and no more immediate victim. *Cf. Hall v. Moore*, 2011 WL 4502641, at *3 (Ky. App. Sept. 30, 2011) (observing that intervening cause will not defeat proximate causation in negligence action when "the party guilty of the first act or omission might reasonably have anticipated the intervening cause as a natural and probable consequence of his own [wrongful conduct]" (quoting *Dixon v. Ky. Utilities Co.*, 174 S.W.2d 19, 22 (Ky. App. 1943))).

D. United's Complaint Satisfies Rule 9(b)'s Heightened Pleading Standard

United's Complaint satisfies Rule 9(b)'s heightened pleading standard. Rule 9(b) requires a plaintiff to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). This means a plaintiff 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." *U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 504 (6th Cir. 2007).

As Concord admits, United's Complaint easily satisfies this standard. United has identified: the specific false attestation (content), Compl. ¶ 70; Concord, through its agent Radix (the identity of the party), *id.* ¶¶ 67-68; August 1, 2025, via the federal IDR web portal (the time and place), *id.* ¶ 67; the fraudulent scheme of submitting ineligible Medicare claims with false eligibility attestations (the scheme), *id.* ¶¶ 1-6, 49-52; Concord's knowledge of ineligibility from the PRA (the fraudulent intent), *id.* ¶¶ 61-64; and the resulting IDRE fees, administrative fees, and potential obligation to pay an additional $1,009.64 in order to satisfy the IDRE's award (the injury), *id.* ¶¶ 74, 102, 112.[6] This level of detail exceeds what the Sixth Circuit requires. *See Bledsoe*, 501 F.3d at 509 (a complaint satisfies Rule 9(b) if it enables defendants to "prepare an informed pleading responsive to the specific allegations of fraud").

At the pleading stage, United is not required to identify every ineligible claim with documentary specificity; that is what discovery is for. Concord's argument that United's broader declaratory judgment claim fails to satisfy Rule 9(b), Mot. at 23-24, is squarely foreclosed by binding Sixth Circuit precedent. When a plaintiff "pleads a complex and far-reaching fraudulent scheme with particularity, and provides examples of specific false claims submitted" pursuant to that scheme, the plaintiff "may proceed to discovery on the entire fraudulent scheme." *Bledsoe*, 501 F.3d at 510. The examples provided need only be "representative samples of the broader class of claims." *Id.*; *see also U.S. ex rel. Marlar v. BWXT Y-12, LLC*, 525 F.3d 439, 445 (6th Cir. 2008) (same). United has done precisely what *Bledsoe* requires by pleading a single, detailed exemplar claim with full particularity and alleging that Concord has engaged in a pattern of similar conduct

[6] The IDRE awarded $1,123, but United had already paid $113.36. Compl. ¶¶ 61, 77.

across hundreds of disputes. Discovery will reveal the full scope of Concord's claim-submission practices.

IV. THE *NOERR-PENNINGTON* DOCTRINE DOES NOT IMMUNIZE CONCORD'S CONDUCT

The *Noerr-Pennington* doctrine does not immunize Concord's fraudulent conduct. The *Noerr-Pennington* doctrine, grounded in the First Amendment's protection of the right to petition the government for redress, protects "conduct aimed at influencing decision-making by the government." *Geomatrix, LLC v. NSF Int'l*, 82 F.4th 466, 477 (6th Cir. 2023). IDREs are not government decisionmakers; they are private, CMS-certified entities that adjudicate payment disputes between providers and insurers, and the doctrine therefore does not apply. Even if the doctrine did apply, courts decline to extend immunity under the doctrine's "sham" exception where, as here, a party knowingly submits false representations in an adjudicative proceeding. Because Concord submitted an attestation it knew to be false, the sham exception would independently defeat any claim of immunity.

Concord's reliance on *Geomatrix* is unavailing. Mot. at 23-24. In *Geomatrix*, the court applied *Noerr-Pennington* immunity because the defendant's conduct involved efforts to influence state regulators who had independent authority to license or deny the plaintiff's product. *Geomatrix*, 82 F.4th at 481-83. The court found that the plaintiff's injury "primarily flows from the actions of state agencies," not from the defendant's private conduct. *Id.* at 482. The harm to United flows directly from Concord's false attestation, not from any governmental action. If filing any claim with a CMS-certified entity constituted protected petitioning activity, providers could submit blatantly fraudulent claims with impunity so long as the adjudicator had some connection to federal law.

Further, the sham exception to the *Noerr-Pennington* doctrine independently forecloses any immunity for Concord's conduct. A party's actions are a sham if, though "ostensibly directed toward influencing governmental action," they merely cover "an attempt to interfere directly" with the plaintiff's conduct. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014). The sham exception applies when a party pursues adjudication of a claim it knows is meritless. *Graham Packaging Co., L.P. v. Ring Container Techs., LLC*, 2025 WL 978220, at *9 (W.D. Ky. Mar. 31, 2025) (applying the sham exception and declining to dismiss when counterclaim plaintiff alleged defendant brought a lawsuit to enforce a patent it knew was "invalid and unenforceable"). Here, Concord did not merely pursue a close-call claim or a claim with arguable merit. Concord knew that its IDR submission for a patently ineligible claim was meritless. That is the paradigmatic case for the sham exception. Concord cannot claim immunity for consequences that flow directly from its own deceptive conduct.

CONCLUSION

For the foregoing reasons, United respectfully requests that this Court deny Concord's Motion to Dismiss in its entirety.

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Respectfully submitted:

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