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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMBLEMHEALTH, INC., Plaintiff, -against- NORMAN M. ROWE, M.D., NORMAN M. ROWE, M.D. PLLC, NORMAN M. ROWE MD OF NEW JERSEY LLC, ROWE PLASTIC SURGERY OF NEW JESREY LLC, and EAST COAST PLASTIC SURGERY PLLC PA, Defendants.	Case No. 26-cv-3311 *DOCUMENT ELECTRONICALLY FILED VIA CM/ECF* JURY TRIAL DEMANDED **L. Civ. R. 78.1(a) MOTION DATE: JUNE 15, 2026**

DEFENDANTS' NOTICE OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6) AND TO STAY DISCOVERY

PLEASE TAKE NOTICE that on this 13th day of May 2026, Defendants Norman M. Rowe, M.D. ("**Dr. Rowe**"), Norman M. Rowe, M.D. PLLC ("**Rowe M.D. PLLC**"), Norman M. Rowe MD of New Jersey LLC ("**Rowe LLC**"), Rowe Plastic Surgery of New Jersey LLC ("**RPSNJ**"), and East Coast Plastic Surgery PLLC PA ("**ECPS**") (collectively and hereinafter, the "**Defendants**"), by and through their undersigned counsel, Mandelbaum Barrett PC, hereby move to dismiss the complaint ("**Complaint**") of Plaintiff EmblemHealth, Inc. ("**Plaintiff**" or "**Emblem**") pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6); and move to stay discovery pending the Court's Rule 12 adjudication, before the Honorable Susan D. Wigenton at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street Room 4015, Newark, NJ 07101, on June 15, 2026 or another date and time to be determined by the Court. In support of this Motion, Defendants shall rely on the accompanying Memorandum of Law and supporting Declaration with exhibits, and any Reply that Defendants shall submit pursuant to L. Civ. R. 7.1(d)(3).

Respectfully submitted,

/s/ Harrison McAvoy
Harrison McAvoy, Esq.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of Defendants' Notice of Motion to Dismiss and to Stay of Discovery, as well as all accompanying documents, were served on the all counsel of record via CM/ECF on this 13th day of May 2026.

/s/ Harrison McAvoy
Harrison McAvoy, Esq.

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT AND TO STAY DISCOVERY PENDING ADJUDICATION

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INTRODUCTION

Plaintiff, one of the largest health insurers in the tri-state area, is attempting to unwind 21 binding arbitration awards (hereinafter, the "**Disputed Awards**") arising from independent dispute resolution ("**IDR**") proceedings held pursuant to and in strict accordance with statutory law under the federal No Suprises Act ("**NSA**"). But under the NSA's framework, Emblem cannot overturn those final awards in this or any other forum.

The awards, dating back as far as 2024, were issued by qualified, neutral arbiters selected by the parties, *i.e.*, Certified Independent Dispute Resolution Entities ("**IDREs**"), who carefully considered the parties' positions and made their decisions based on specific factors mandated by law. *See* 42 U.S.C. § 300gg-111(c)(1). Tellingly, Emblem never challenged, sought to vacate, or otherwise took issue with the Disputed Awards before this Action. But frustrated that the NSA's IDR process, which Emblem lobbied for and influenced, has begun to level the playing field for out-of-network billing disputes, and thus threatens Emblem's unwieldy leverage over providers and patients alike, Emblem now wages a collateral attack on the IDR system itself. It also asks this Court to grant drastic relief to which it is not entitled, namely, to deem all 21 Disputed Awards "unenforceable," and to vacate each Award, albeit by way of defective procedural means.

With this Hail Mary effort, Emblem joins a growing list of insurers (and providers) who have unsuccessfully tried to upend final IDRE determinations.[1] *See, e.g.*, *Modern Anthem Blue Cross et al. v. HaloMD LLC*, 8:25-cv-01467 (C.D. Cal. April 9, 2026) (Dkt. No. 135) (decision granting defendant's motion to dismiss without leave to amend), attached as **Exhibit 1** to the Adler Declaration;[2] *Aetna Health Inc. et al. v. Radiology Partners, Inc. et al.*, (M.D. Fla. April 20, 2026) (Dkt. No. 105) (decision granting motion to dismiss with prejudice finding that "Aetna's attempt to end-around the NSA and FAA strictures is preempted…[t]he NSA adopts the ferocity of the FAA in defending arbitration awards."), attached as **Exhibit 2** to the Adler Declaration.

Much like these recent cases, Emblem is attempting to manufacture a cause of action where none exists simply because Defendants exercised their lawful choice to utilize the IDR system. But providers have every right to arbitrate under the NSA, and Emblem's *post hoc* dissatisfaction with the IDR process itself does not give rise to an independent cause of action. Thus, much like the recent decisions against other insurance carriers, a dismissal is equally appropriate here, for several reasons.

First, Plaintiff's claims lack federal subject-matter jurisdiction and thus cannot be heard in this Court (or any other forum) as a matter of law. Because the NSA does not provide for a federal private right of action, much less include language providing an express grant of federal jurisdiction, there is no reason why claims should be heard in federal court, absent some independent jurisdictional basis. Plaintiff has provided none, and the Complaint must be dismissed in its entirety.

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[1] Courts have likewise repeatedly rejected providers' attempts to upend or otherwise address IDR awards, confirming the restrictions on judicial review under the NSA. *See infra* at n.6.

[2] Defendants submit the Declaration of Steven I. Adler, Esq. ("**Adler Declaration**") in support of this Motion.

Second, Plaintiff fails to meet the strict requirements for vacatur. Judicial review of IDRE determinations is extremely limited under the NSA, except as allowed by 10(a) of title 9 the Federal Arbitration Act ("**FAA**"), which provides four discrete and exclusive grounds for vacatur. 42 U.S.C. § 300gg-111(c)(5)(E)(i). The Complaint falls well short of satisfying any grounds to vacate. Indeed, none of Plaintiff's allegations of fraud in the IDR process meet the threshold for vacating arbitral awards, much less the heightened pleading requirements of Rule 9(b), and Plaintiff's assertions of arbitrator misconduct and wrongdoing lack any merit whatsoever. Again, this alone sinks Plaintiff's claims.

Third, Plaintiff's attempt to expand the avenues for judicial review under the NSA through use of the Declaratory Judgment Act also fails. Courts have repeatedly rejected similar attempts to expand the narrow statutory scope of judicial review under the NSA.

Fourth, the Complaint is procedurally defective. A request for vacatur must be made in the form of a motion or petition whereby the movant bears the operative burden. Plaintiff has failed to adhere to these simple procedural steps.

Fifth, the Complaint violates the *Noerr-Pennington* doctrine, as Defendants are immunized from all of Plaintiff's claims. To be clear, IDR proceedings are the exact type of quasi-litigation activity immunized and protected under *Noerr-Pennington* and the First Amendment. Emblem's attempts to chill Defendants' rights to petition under the NSA must be rejected in their entirety.

Sixth, Plaintiff's state and common law claims are preempted as they conflict with the text and purpose of the NSA. Federal law preempts state laws when they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The NSA and its incorporation of FAA Section 10(a) carry preemptive force. Plaintiff's state law claims attempt to frustrate the objectives of the NSA's IDR process and seek to upend the NSA's strict judicial

review limitations.

Seventh, the Complaint is a textbook improper group pleading that makes it impossible to follow the five named defendants and what they are alleged to have done in connection with each cause of action. Plaintiff improperly lumps all five Defendants together under the group title "Rowe." No acts or omissions are ever attributed to any one defendant individually. The Complaint simply repeats *ad nauseum* that "Rowe" purportedly did alleged acts. Of course, we never actually learn to which Rowe defendant Plaintiff is referring at any point in the Complaint.

Eighth, the Complaint fails on standing grounds. To establish standing, a plaintiff must prove: (1) injury-in-fact, or a concrete and particularized harm to a legally protected interest; (2) causation, or a fairly traceable connection between the asserted injury-in-fact and the alleged actions of the defendant; and (3) redressability, or a non-speculative likelihood that the injury will be redressed by a favorable decision. At a minimum here, Plaintiff cannot satisfy Article III's traceability requirement.

Ninth, the Complaint is lacking in the basic elements required to state a claim upon which relief can be granted. Each of Plaintiff's remaining counts, *i.e.*, (1) the New Jersey Insurance Fraud Prevention Act ("**NJIFPA**"); (2) unjust enrichment; (3) common law fraud; and (4) negligent misrepresentation, are insufficiently pled under controlling authority and otherwise cannot be pled under the operative law of those claims and the facts of this case as described herein. The Complaint also rests on conclusory and unsupported averments and repeatedly violates the basic tenets of pleading.

And ***tenth***, all claims against Dr. Rowe individually must be dismissed because Emblem does not and cannot allege that Dr. Rowe was a party to the underlying IDR proceedings—which he was not. Nor is it alleged that Dr. Rowe did anything in his individual capacity other than

provide medical services. Despite these glaring omissions, Plaintiff named Dr. Rowe as the lead defendant, suggesting an intent to harass.

Lastly, Defendants respectfully request that discovery be stayed pending resolution of their motion to dismiss so as not to waste time and resources on discovery when there is a significant likelihood of dismissal. This is particularly true where there are serious doubts as to subject matter jurisdiction, standing, and the merits of Plaintiff's claims as a matter of law.

FACTUAL BACKGROUND

A. The No Suprises Act.

When a doctor provides services on an out-of-network basis, the provider only has a contractual relationship with the patient. Thus, before enactment of the NSA, patients became unnecessarily involved in payment disputes involving their insurers, in connection with a practice often referred to as "balance billing." Dr. Rowe and his practice have generally avoided the practice of balance billing, both before and after passage of the NSA. *See* Compl. ¶ 11.

In 2020, Congress passed the No Surprises Act to address "surprise medical bills." *GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. 22-cv-6614, 2023 WL 5815821, at *2 (D.N.J. Sept. 8, 2023). In addition to capping patient payments in certain contexts, the NSA provides "a procedure for payment of out-of-network providers by health insurers." *Id.* Congress realized the need for an efficient process to resolve such disputes between insurers and providers. Its solution was the IDR process. Under the IDR rubric, experienced and certified IDREs act as neutral arbiters and render final determinations of such disputes in a "baseball" style arbitration held in strict accordance with rules set by Congress. 42 U.S.C. § 300gg-111(c). Stated differently, through this "baseball" style arbitration, two offers are submitted by the carrier and the provider. The IDREs then select the offer that best represents the value of the service based on strict criteria

set forth by Congress in view of the parties' positions and supporting materials. 42 U.S.C. § 300gg-111(c)(5)(C). Thus, if an IDRE selected an offer from any of the defendants during an IDR proceeding, it did so only because that neutral arbiter deemed such offer to be more reasonable and substantiated than what Emblem provided.

As a critical part of the NSA, Congress barred judicial review of IDRE determinations, except in very limited cases where vacatur is permitted under the FAA. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i). These limits were crucial to ensure that our court systems were not flooded with parties unhappy with final IDRE determinations. Prior to the NSA, providers were often dissuaded from challenging trivial claim payments by insurers for fear of litigation costs. Now, providers can take part in the IDR process to efficiently arbitrate payments.

Despite extensive lobbying concerning the NSA, insurance companies like Emblem have since become unhappy with this new Congressional check. Rather than take issue with the legislation itself, the insurers have chosen to attack the NSA's IDR system by way of collateral attack in federal courts (including in this case and others). While courts have been rejecting the carriers' post-hoc challenges, Plaintiff's meritless claims threaten to open the floodgates for all sides—both insurers and providers—to challenge tens of thousands of final IDRE awards in our federal courts.

LEGAL AUTHORITY

A complaint must allege "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires plaintiff to provide "more than labels and conclusions, and a formulaic recitation of the elements." *Twombly*, 550 U.S. at 555. Although a plaintiff's allegations of material fact are taken as true and construed in the light most favorable

to the plaintiff, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim. *Id.* at 557. Only pleadings stating plausible claims for relief can survive a motion to dismiss. To be clear, a court is "not bound to accept as true legal conclusions couched as factual allegations." *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (citation modified). Deciding whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.*; *Twombly*, 550 U.S. at 555-56. A plaintiff's obligation to provide the grounds for relief requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. *Twombly*, 550 U.S. at 555.

ARGUMENT

A. Plaintiff's Claims Lack Federal Subject-Matter Jurisdiction.

The asserted claims do not support federal subject-matter jurisdiction. Plaintiff alleges jurisdiction under the NSA, *see* Compl. ¶ 17, but the NSA does not provide a basis for federal jurisdiction. Without an independent basis for proceeding in federal court, the complaint must be dismissed as a matter of law.[3]

The NSA neither bestows the grant of federal jurisdiction nor creates a private right of action, essential ingredients for a suit to "arise under" federal law for the purposes of federal question jurisdiction. *See Gunn v. Minton*, 568 U.S. 251, 257 (2013) (most often a "federal law creates the cause of action asserted"). In most cases, federal causes of action are created expressly, such that "the law permits a claimant to bring a claim in federal court," using language, for example, stating that suit may be brought "in any district court in the United States." *Int'l Union*

[3] The moving party bears the burden of proving that the arbitration award at issue should be vacated. *E. Atl. States Reg'l Council of Carpenters, UBCJA v. CMS Constr., Inc.*, 2022 WL 17991613, at *3 (D.N.J. Dec. 29, 2022).

of Operating Eng'rs, Local 150 v. Ward, 563 F.3d 276, 283 (7th Cir. 2009).[4]

The NSA contains no such language. The statute does not include a grant of federal jurisdiction. *See generally* 42 U.S.C. § 300gg-111. Nor does it create an express private right of action. Rather, the provision on which Plaintiff's claim is based simply permits a very narrow path for vacatur in four discrete circumstances, as an exception to rule that all NSA IDR awards "shall not be subject to judicial review." *Id.* § 300gg-111(c)(5)(E)(i)(II). The statute does not say that an application to vacate may be brought in federal court, and it does not create a private right for a discrete class of benefited persons. *See Gonzaga*, 536 U.S. at 284. The language of the provision, instead of creating a private action, merely creates a procedure by which a party can make an application for a summary proceeding to vacate an arbitral award. *Cf. Teamsters Local 177 v. United Parcel Serv.*, 966 F.3d 245, 248 (3d Cir. 2021) (applications to vacate arbitral awards under the FAA are summary proceedings, rather than a civil action); *see also Goldman v. Citigroup Global Market Inc.*, 834 F.3d 242, 249 (3d Cir. 2016) ("The FAA does not itself provide a federal cause of action for vacatur of an arbitration award.").

The NSA's incorporation of certain FAA provisions further supports the conclusion that requests to vacate an arbitral award under the NSA is a summary proceeding, not a private right of action. Indeed, the Supreme Court has held that the FAA's vacatur provision, which is incorporated in part by the NSA, "do[es] not [itself] support federal jurisdiction." *Badgerow v. Walters*, 596 U.S. 1, 8 (2022) ("Were it otherwise, every arbitration in the country, however distant from federal

[4] Otherwise, in rare cases, a cause may be implied, but only where a statute, in addition to creating a private remedy, creates a private right with "text . . . phrased in terms of the persons benefitted." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 & n.3 (2022) (for example, "*No person* in the United States *shall* . . . be subjected to discrimination . . .") (emphasis in original).

concerns, could wind up in federal district court.").[5] And since the *Badgerow* decision, courts around the country have held that the NSA does not confer a private right of action sufficient to support an independent basis for jurisdiction. *See, e.g.*, *Jeffrey Farkas, M.D. LLC v. Horizon Blue Cross Blue Shield of New Jersey*, 790 F. Supp. 2d 129, 137 (E.D.N.Y. 2025).[6] That same logic applies to the NSA's provision concerning vacatur.

The Court's *Badgerow* decision provides guidance towards determining whether the NSA permits federal jurisdiction over applications to vacate arbitral awards. In *Badgerow*, the Court considered whether the FAA's vacatur provision supported an independent basis for federal jurisdiction. 596 U.S. at 4. Answering that question in the negative, the Court held that "the [FAA's] authorization of a petition does not itself create jurisdiction," including because the FAA's vacatur provision did "not mention the court's subject-matter jurisdiction at all." *Badgerow*, 596 U.S. at 4, 8-9, 11 & n.4 (in the absence of diversity, federal jurisdiction requires some basis "beyond [the vacatur provision] itself"). In doing so, the Court rejected arguments that it should "look through" the vacatur provision to the underlying dispute to find some basis for federal jurisdiction. *Id.* at 11-12.

Just like the FAA, the NSA's exceptions to the prohibition on judicial review are extremely

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[5] If an applicant for vacatur cannot identify an "independent jurisdictional basis" for federal jurisdiction, "the action belongs in state court." *Id.* ("[W]e have long recognized [state courts'] prominent role in arbitral enforcement.") (quotations omitted).

[6] Numerous other federal courts around the country have held that the NSA does not provide a private right of action to confirm an award sufficient to support federal jurisdiction. *See, e.g.*, *Modern Orthopaedics of NJ v. Premera Blue Cross*, No. 25-cv-1087, 2025 WL 3063648, at *8 (D.N.J. Nov. 3, 2025); *NeuroShield Network SE, LLC v. S&S Healthcare Strategies*, No. 25-cv-4127, 2026 WL 743000, at *4 (N.D. Ga. Mar. 16, 2026) ("The fact that the IDR process is required by a federal statute is not sufficient to establish that a federal issue is raised on the face of the petition."); *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Assoc.*, No. 25-cv-1255, 2025 WL 3496382, at *7 (S.D.N.Y. Dec. 5, 2025) ("[T]he NSA does not provide a private right of action and therefore the Court may not exercise federal-question jurisdiction based on the NSA.").

narrow, and the NSA merely authorizes applications to vacate in a court of competent jurisdiction. This conclusion follows easily from the text of the statute, which only identifies the limited circumstances when "judicial review" may be appropriate—it does not supply an independent basis for federal jurisdiction. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i) (providing that IDR determinations "shall not be subject to judicial review, except" for the four bases set forth in the FAA). If anything, the language of the FAA's vacatur provision, which the *Badgerow* Court held did not support jurisdiction, is far more suggestive of a jurisdictional basis than the NSA's vacatur provision. The FAA specifically provides that in certain cases parties may petition for vacatur in "the United States court." 9 U.S.C. § 10; *Badgerow*, 596 U.S. at 8 ("[T]he FAA authorizes parties to arbitration agreements to file specific actions in federal court . . . . But those provisions . . . do not themselves support federal jurisdiction."). The NSA's provision, in contrast, merely authorizes vacatur of IDR determinations, without any reference to the United States courts.

Consistent with *Badgerow*, as well as Supreme Court authority on "arising under" jurisdiction and the creation of private rights of action, the NSA likewise fails to supply a basis for asserting federal question jurisdiction. In the absence of any grant of federal jurisdiction or creation of private right of action, there is no basis to conclude that federal jurisdiction lies. Moreover, the NSA's vacatur provision incorporates the FAA's Section 10 by reference, *see id.* at § 300gg-111(c)(5)(E)(i), and courts have held that court interpretations of Section 10 therefore apply equally to the NSA. *See Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 620-21 (5th Cir. 2025).[7] For these reasons, Plaintiff's claims should be dismissed for lack of

[7] Plaintiff's claim for declaratory relief likewise does not support jurisdiction. "The Declaratory Judgment Act, 28 U.S.C. § 2201, alone does not provide a court with jurisdiction." *California v. Texas*, 593 U.S. 659, 672 (2021) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-72 (1950)).

federal subject-matter jurisdiction.

B. Plaintiff's Vacatur Claim is Not Within the Narrow Scope of Judicial Review.

Even if there were jurisdiction for the Court to hear this case—there is not—Plaintiff's claim under the NSA fails to meet the strict requirements for vacatur. *First*, Plaintiff's allegations of fraud do not meet the requirements under the NSA or Rule 9(b), which imposes heightened pleading requirements for allegations of fraud. *See, e.g.*, Section I.4 *infra*. *Second*, a majority of Plaintiff's allegations of fraud were either raised, or could have been raised, during the IDR proceeding and therefore are not actionable. *Finally*, Plaintiff's allegations of misconduct or malfeasance by the IDREs falls woefully short of the requirements to vacate an arbitral award.

Judicial review of IDRE determinations under the NSA is extremely limited. Congress was unequivocal that IDRE determinations "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9 [the FAA]." 42 U.S.C. § 300gg-111(c)(5)(E)(i). Those four bases thus provide the exclusive grounds for vacating an IDR award under the NSA. In resolving petitions to vacate, courts follow decisions interpreting the FAA. *Guardian Flight*, 140 F.4th at 620-21. In assessing the FAA's prescribed bases, courts employ an "'extremely deferential standard,' the application of which is generally to affirm easily the arbitration award." *Hamilton Park Health Care Ctr. Ltd. v. 1199 SEIU United Healthcare Workers East*, 817 F.3d 857, 861 (3d Cir. 2016) (quotations omitted).

Plaintiff asserts that the awards should be vacated under the following prongs: paragraph (1) ("corruption, fraud, or undue means"); paragraph (3) ("where the arbitrators were guilty of . . . misbehavior"); paragraph (4) ("the arbitrators exceeded their powers"); and finally, a basis with questionable validity in the Third Circuit, where there was a "manifest disregard of the law." The complaint fails to sustain a claim under any basis.

1. Plaintiff Fails to Allege "Corruption, Fraud, or Undue Means" in the Arbitration Process.

Plaintiff's Complaint is littered with references to "fraud" and a "fraudulent scheme," but when the underbrush of Plaintiff's unsupported allegations is cleared away, Plaintiff has no valid basis to assert fraud in the IDR process. Nor do Plaintiff's allegations satisfy heightened pleading requirements for pleading fraud.

Under the prong for vacatur based on "corruption, fraud, or undue means," courts apply a rigorous three-part test. Plaintiff must establish: "(1) the existence of fraud by clear and convincing evidence, (2) that the fraud was not discoverable with the exercise of due diligence, and (3) that the fraud materially relates to an issue in the arbitration." *Int'l Brotherhood of Teamsters, Local 701 v. CBF Trucking, Inc.*, 440 Fed. App'x 76, 78 (3d Cir. 2011). "[F]raud requires a showing of bad faith during the arbitration proceedings, such as bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence." *Guardian Flight*, 140 F.4th at 621. "'Undue means' 'connotes behavior that is immoral if not illegal.'" *Id.* (quoting *A.G. Edwards & Sons, Inc. v. McCullough*, 967 F.2d 1401, 1403 (9th Cir. 1992) (per curiam)). Indeed, a plaintiff must identify "intentional malfeasance," rather than aggressive advocacy. *See Guardian Flight*, 140 F.4th at 621. Significantly, where, like here, the "the [alleged] fraud or undue means is not only discoverable, but discovered and brought to the attention of the arbitrators, a disappointed party will not be given a second bit at the apple." *A.G. Edwards*, 967 F.2d at 1404.

Claims of fraud under the NSA must also satisfy Rule 9(b) of the Federal Rules of Civil Procedure. *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1117 (11th Cir. 2025). "Under Rule 9(b), claims of fraud must be pled with particularity, which means identifying the who, what, when, where, and how of the fraud alleged." *Id.*; *see also MarkDutchCo 1 B.V. v. Zeta Interactive Corp.*, No. 19-3845, 2021 WL 3503805, at *5 (3d Cir. 2021). But none

of Plaintiff's allegations come even close to this heightened threshold.

First, none of Plaintiff's allegations of fraud are stated with the requisite particularity. Plaintiff's claims of fraud are based entirely on supposition, implication, and guesswork—what Plaintiff imagines Defendants may have said to the IDREs. For each of the 5 IDRs that Plaintiff provides allegations concerning the IDR (beyond the table list in Exhibit A to the Complaint), Plaintiff's allegations rest on conclusions drawn from Plaintiff's assumptions. *See, e.g.*, Compl. ¶ 186 ("Rowe obviously misrepresented to the IDRE [its unique use of surgical] techniques. There is no other explanation for the IDRE's characterization . . . ."); ¶ 284-85 ("[T]he information submitted to the IDRE by Rowe with respect to [Rowe's level of training] must have been false and misleading. . . . It is impossible to discern what the IDRE considered or was referring to as the level of training or experience of the 'provider or facility' . . ."); ¶ 284 ("[T]he information submitted to the IDRE by Rowe with respect to these factors must have been false and misleading."); ¶ 221 ("Upon information and belief, Rowe submitted additional false and misleading information to the IDRE . . .").[8]

This is not surprising because Emblem acknowledges that "submissions to the IDRE are made on an *ex parte* basis so that neither side sees the other side's submission." Compl. ¶ 69. So, Emblem alleges fraud based on submissions that it has never actually seen, and only on what it thinks may have been submitted in view of its interpretation of certain IDRE decisions. This could not be further from the requirements of Rule 9(b). By way of example, Emblem draws conclusions about what Defendants submitted to the IDREs primarily based on a series of "checkmarks in a

[8] An allowance for allegations "upon information and belief" "must not be mistaken for license to base claims of fraud on speculation and conclusory allegations. Where pleading is permitted on information and belief, a complaint must adduce specific facts supporting a strong inference of fraud or it will not satisfy even a relaxed pleading standard." *Wexner v. First Manhattan Co.*, 902 F.2d 169, 172 (2d Cir. 1990).

table" in the IDREs' awards. *Id.* ¶¶ 181, 214, 280, 284. In other words, Plaintiff is simply guessing, without any basis in fact, that Defendants made misrepresentations to the IDRE.

This is patently insufficient. Without concrete alleged misrepresentations, Plaintiff's claims of fraud must be rejected. In fact, for 16 of the 21 IDRs challenged by Plaintiff (as set forth in Exhibit A to the Complaint), Plaintiff offers exactly ***zero*** specific allegations concerning fraudulent conduct and simply lists a table of IDR case numbers with award amounts.

Second, none of the fraud allegations satisfy the standards for vacating an award under the FAA or NSA, which requires "bad faith . . . such as bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence." *Guardian Flight*, 140 F.4th at 621. Plaintiff's allegations of fraud, across all of the 5 awards discussed in the Complaint, even if based on conjecture, are limited to the following:

- Defendants represented that it is a "small private practice" and has a small market share. Compl. ¶¶ 143, 248, 350.
- Defendants represented its contracting history with Plaintiff and that Defendants had engaged in good faith efforts to negotiate an in-network agreement. *Id.* ¶¶ 149, 185, 242, 244, 281, 353.
- Defendants represented that Plaintiff did not negotiate a settlement with Defendants in good faith. *Id.* ¶ 152.
- Defendants did not disclose to the IDRE all of their prior contracts with Plaintiff. *Id.* ¶¶ 153, 354.
- Defendants represented that Dr. Rowe "has completed extensive research, numerous publications, and presentations." *Id.* ¶ 154.
- Defendants represented that Dr. Rowe's is "one of the few" practices employing a specific surgical technique. *Id.* ¶¶ 186, 219, 246.
- Defendants represented facts concerning a patient's "acuity." *Id.* ¶ 351.

None of this comes even close to the level of fraud required to vacate an award under the FAA and NSA. For one, many of these statements are of opinion, and thus cannot be characterized by Plaintiff as demonstrably and intentionally false. Whether Defendants' practice is "small,"

whether either party acted in good faith, whether only "few" practices are employing a technique are all subjective statements (or legal arguments), not intentional falsehoods, and thus cannot form the basis of a fraud claim. *In re Aetna, Inc. Sec. Litig.*, 617 F.3d 272, 283 (3d Cir. 2010). That said, the American Medical Association deems any medical practice of having 10 or fewer physicians as a "small practice."[9] The practice has less than 5 doctors, and Defendants' Complaint does not allege otherwise. This argument lacks merit.

Likewise, Plaintiff's complaint that Defendant "did not disclose" all of its contracts with Plaintiff to the IDRE similarly fails, as non-disclosure cannot form the basis of a claim of fraud where a party is not under a duty to disclose. *Levon v. CorMedix Inc.*, 797 F. Supp. 3d 381, 404-05 (D.N.J. 2025). Absent allegations of objective, intentional malfeasance, Plaintiff's claim for vacatur for "fraud" or "undue means" must fail.[10]

Third, the identified claims of fraud were raised or could have been raised before the IDRE and therefore cannot support vacatur. Not only was the purported fraud discoverable at the time, Plaintiff admits that it repeatedly raised such issues with the IDRE. *See, e.g.*, Complaint at ¶ 365 ("Emblem made the IDRE aware that Rowe 'has increased his requested amount for CPT 19318 from $150,000 in 2024 to $270,000 in 2025 with no evidence of material changes in services, complexity, or circumstances.'"). This alone sinks Plaintiff's vacatur claims. *See, e.g.*, *Modern*

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[9] *See, e.g.*, AMA, AMA examines decade of change in physician practice ownership and organization (Jul 12, 2023), https://www.ama-assn.org/press-center/ama-press-releases/ama-examines-decade-change-physician-practice-ownership-and.

[10] To the extent Plaintiff asserts that Defendants' negotiations of offers of payment prior to the institution of IDR proceedings can provide a basis for vacating an award, Plaintiff is wrong. *See, e.g.*, Compl. ¶ 134. The NSA's provision concerning vacatur, by reference to the FAA, limits applications to vacate to challenges based on conduct occurring during the arbitration process. *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008)) (FAA § 10 provides the exclusive grounds for vacatur).

Anthem Blue Cross et al. v. HaloMD LLC, No. 8:25-cv-01467 (C.D. Cal. April 9, 2026) (Dkt. No. 135 at 15-16) ("'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.").[11]

2. Plaintiff Fails to Allege "Misbehavior" or a Manifest Disregard by the IDREs, or that the IDREs "Exceeded Their Powers."

Unable to support vacatur under paragraph (1), Plaintiff adopts a "kitchen sink" approach, invoking all but one of the remaining potential bases for vacatur, which focus on the conduct of the IDRE: that the arbitrator demonstrated "misconduct," "exceeded their powers," or exhibited "a manifest disregard of law." Plaintiff comes nowhere close to any of these thresholds.

Arbitrator "misconduct" under paragraph 3 "is conduct that 'so affects the rights of the party that it may be said that he was deprived of a fair hearing.'" *CPR Mgmt., S.A. v. Devon Park Bioventures, L.P.*, 19 F.4th 236, 245 (3d Cir. 2021) (quoting *Newark Stereotypers' Union No. 18, v. Newark Morning Ledger Co.*, 397 F.2d 594, 599 (3d Cir. 1968)). Under the FAA (and thus the NSA), a fair hearing requires only that "the parties have notice and an opportunity to present evidence and arguments before an impartial arbitrator." *Id.* The statute lists as misconduct "refusing to postpone [a] hearing" or "refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10.

With respect to claims that an arbitrator "exceeded their powers" under paragraph 4, it is not enough to show that the arbitrator ruled incorrectly, but that the arbitrator utterly failed to conduct the arbitration appropriately. "Only if 'the arbitrator acts outside the scope of his authority'—issuing an award that 'simply reflects his own notions of economic justice'—may a

[11] Plaintiff's own allegations indicate that by as early as September 2025, Plaintiff believed (erroneously) that Defendant was acting in "bad faith" and "seeking to exploit" the IDR process, and that Plaintiff disclosed this to each IDRE thereafter. Compl. ¶¶ 210, 235, 278, 340-41, 361-65. For each of these 3 specific examples, (iii) through (iv), Plaintiff's claims of fraud must fail.

court overturn his determination'" under this ground. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) (citation modified). The "sole question under [paragraph 4] is whether the arbitrator (even arguably) performed the assigned task, not whether she got the outcome right or wrong." *Gherardi v. Citigroup Glob. Mkts. Inc.*, 975 F.3d 1232, 1238 (11th Cir. 2020).

Plaintiff's invocation of the "manifest disregard" prong is similarly fraught. As an initial matter, it is unclear whether the Third Circuit recognizes such a basis for vacatur under the FAA,[12] much less the NSA. But "if such a standard applies, to act with manifest disregard, 'the arbitrators' decision must fly in the face of clearly established legal precedent, such as where an arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it.'" *Cuker*, 2026 WL 661979, at *2 ("[A] reviewing court will decline to sustain an award [on this basis] only in the rarest case"). In determining whether there has been a manifest disregard of the law, "[t]he court may not reevaluate supposed inconsistencies in the arbitrator's logic or review the merits of the arbitrator's decision." *Paul Green Sch. Of Rock Music Franchising, LLC v. Smith*, 389 Fed. App'x 172, 176 (3d Cir. 2010) (quotations omitted).

Plaintiff's allegations supporting these bases for vacatur are sparse, threadbare, and thus cannot survive a motion to dismiss. The only allegations that address these prongs are either conclusory[13] or simply disagree with the decisions[14] and thus cannot support a request for vacatur.

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[12] The viability of this basis is of questionable application in this Circuit. *Cuker v. Berezofsky*, No. 25-1689, 2026 WL 661979, at *2 (3d Cir. 2026) ("Whether vacatur is appropriate to correct a "manifest disregard" of the law or agreement remains an open question.") (citing *Stolt-Nielsen S.A. v. AnimalFeeds Int'l*, 559 U.S. 662, 672 n.3 (2010)).

[13] *See* Compl. ¶¶ 188, 254, 301, 306 (award was "unsupported, completely irrational and made in manifest disregard of the law").

[14] *See id.* ¶ 159 (complaining that award did not adequately account for QPA and thus was "completely irrational"); ¶ 187 (complaining that award did not "best represent" the value of Defendants' services); ¶¶ 220, 302-04 (complaining that award did not provide sufficient explanation).

C. Plaintiff's Claim for Declaratory Relief Fails.

Plaintiff's First Cause of Action seeks a declaration that the IDR awards are not binding under 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). But numerous federal courts have ruled that this exact provision does not expand the scope of judicial review and cannot be used as an end-around the NSA's provision stating that all IDR determinations "shall not be subject to judicial review, except" in specific delineated circumstances. *See, e.g.*, *Guardian Flight, L.L.C. v. Med. Evaluators of Tex. ASO, L.L.C.*, 140 F.4th 613, 620 (5th Cir. 2025) ("We have already decided that this provision creates no private right of action to challenge IDR awards. The NSA explicitly *bars* judicial review of those awards, except with respect to four scenarios incorporated from the FAA.") (citation modified); *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1086 (M.D. Fl. 2023). Plaintiff thus asks the Court to provide relief it cannot grant and should be dismissed with prejudice.[15]

D. The Complaint is Procedurally Defective.

Next, Plaintiff's Complaint is procedurally defective. A request for vacatur must be made in the form of a motion or petition whereby the movant bears the operative burden of proof (by clear and convincing evidence). *GPS of New Jersey MD, P.C. v. Aetna, Inc.*, 2024 WL 414042, at *2 (D.N.J. Feb. 5, 2024); 9 U.S.C. § 6. It is "procedurally improper for [a] plaintiff to proceed by way of a complaint…in seeking to vacate the arbitration award entered by [an IDRE]." *Id*. Instead, "the proper procedure…is for the party seeking to vacate an arbitration award to file a motion to vacate." *Id*. Plaintiff botched these simple procedural steps.

[15] If the Court dismisses Plaintiffs' claims under the NSA and Declaratory Judgment Act, it can decline to exercise jurisdiction with respect to the remainder of Plaintiff's claims, which are brought under state law.

E. Plaintiff's Claims are Barred by the *Noerr-Pennington* Doctrine.

On its face, the Complaint must be dismissed in its entirety[16] because every category of conduct it challenges—Defendants' submission of claims, initiation of open negotiations, commencement of IDR proceedings, and advocacy before certified IDREs—constitutes core petitioning activity protected by the *Noerr-Pennington* doctrine. Under this well-established doctrine, which arises from the First Amendment's Petition Clause, parties who petition the government for redress of grievances are immune from civil liability unless the conduct amounts to a sham. *Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806 F.3d 162, 179-81 (3d Cir. 2015). Where, as here, Emblem's claims are based solely on Defendants' exercise of rights guaranteed by Congress under the NSA, and the Complaint alleges no conduct independent of that protected petitioning, dismissal of all claims is required.

1. The Noerr-Pennington Doctrine Immunizes Petitioning Activity Before Governmental and Quasi-Judicial Bodies.

Although rooted in antitrust law, the *Noerr-Pennington* doctrine has long since been extended beyond that context. It shields efforts to invoke governmental action, including petitioning courts, administrative agencies, and other quasi-judicial bodies. *See Hanover 3201*, 806 F.3d at 181-83 (applying the doctrine to petitioning state agencies); *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 122 (3d Cir. 1999) ("This immunity extends to persons who petition all types of government entities—legislatures, administrative agencies, and courts."). The doctrine applies here because the arbitrations giving rise to the Disputed Awards occurred pursuant to a congressionally mandated IDR process under the NSA, implemented as part of a federal regulatory

[16] A court may decide the applicability of the *Noerr-Pennington* doctrine on a motion to dismiss under Fed. R. Civ. P. 12(b)(6) in the absence of factual issues. *Indivior Inc. v. Dr. Reddy's Lab'ys S.A.*, 2020 WL 4932547, at *8 (D.N.J. Aug. 24, 2020).

scheme. H.R. Rep. 116-615 (2020), at 32-33; 42 U.S.C. § 300gg-111(c).

2. Every Category of Conduct Alleged in the Complaint Constitutes Protected Petitioning Activity.

Here, every allegation of wrongdoing in the Complaint targets conduct that falls squarely within the *Noerr-Pennington* doctrine's protection.

The Complaint does not allege any tortious conduct independent of Defendants' participation in the NSA's dispute resolution process. Each challenged category of conduct—the submission of insurance claims reflecting billed charges; the issuance of Open Negotiation Notices through counsel; the initiation and prosecution of IDR Proceedings before certified IDREs; the submission of information and arguments to the IDREs regarding practice size, market share, training, patient acuity, and negotiation efforts; and the scheduling of procedures at in-network facilities to invoke the NSA's framework—constitutes the exercise of rights expressly conferred by federal statute. *See* 42 U.S.C. § 300gg-111; 45 C.F.R. § 149.510. Plaintiff may disagree with the amounts Defendants claimed or the characterizations they offered, but disagreement with the substance of a petition does not strip it of constitutional protection, which persists in the face of objectively reasonable petitioning regardless of any alleged motive. *E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138-40 (1961); *Prof. Real Estate Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 59-60 (1993).

3. The "Sham Litigation" Exception Does Not Apply, and All Claims Must be Dismissed.

Plaintiff cannot avoid dismissal by invoking the narrow sham litigation exception to *Noerr-Pennington* immunity, which is not even pled. Indeed, Emblem cannot satisfy the baselessness requirement under any formulation. The Complaint's own allegations foreclose the exception: Emblem concedes that the IDREs ruled in Defendants' favor with respect to every Disputed Award and cites no instances in which Emblem itself received a favorable outcome in the IDR process.

Accordingly, there is no individual petition within the series that can be characterized as baseless, much less the requisite "pattern" of baseless filings brought "without regard to the merits." *Hanover 3201*, 806 F.3d at 180-81; *Prof. Real Estate Invs., Inc.*, 508 U.S. at 60 n.5 ("A winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham.").

Emblem's contention that Defendants' submissions contained misrepresentations does not alter this analysis; the Supreme Court in *Noerr* itself confronted allegations that the petitioners' advocacy was "malicious and fraudulent" yet held that such characterizations did not defeat immunity, *Noerr Motor Freight, Inc.*, 365 U.S. at 140-42, and as the Court later explained, only "sham petitioning"—not merely aggressive, self-serving, or even inaccurate petitioning—forfeits the protection of the First Amendment. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 525 (2002). A series of petitions that uniformly succeed on the merits is the antithesis of the "pattern of baseless, repetitive claims" that the sham exception was designed to reach. *Prof. Real Estate Invs., Inc.*, 508 U.S. at 60 n.5.

Accordingly, because *Noerr-Pennington* immunity forecloses liability for protected petitioning activity, and because the Complaint alleges no conduct independent of Defendants' petitioning, each of Emblem's six causes of action must be dismissed.

F. Plaintiff's State and Common Law Claims Fail on Preemption Grounds.

Plaintiff's state and common law claims are preempted as they conflict with the text and purpose of the federal NSA. Federal law preempts state laws when it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The state law claims asserted in the Complaint here seek to frustrate the purposes and objectives of NSA IDR's process and are entirely inconsistent with the NSA's strict judicial review limitations. Congress created a nationally uniform, limited-judicial-review standard for IDR disputes under the NSA.

Allowing Emblem's causes of action under state law to collaterally attack the NSA's regime for resolving such disputes would frustrate such uniformity and subject the NDA IDR processes to fifty different state liability regimes, with state courts and juries second-guessing final IDR determinations based on varying state law theories.

Speaking directly on this issue, a court in the Middle District of Florida recently dismissed similar claims on preemption grounds. In *Aetna Health*, the court made clear that:

> Aetna's attempt to end-around the NSA and FAA strictures is preempted. The NSA adopts the ferocity of the FAA in defending arbitration awards. The FAA preempts state law claims that would otherwise frustrate its purpose…. Because the NSA adopted those specific provisions of the FAA, Aetna's remaining claims must also fall—they are both preempted by the NSA and FAA and otherwise inadequate grounds to challenge the IDR awards. Regarding those claims yet to be submitted to the IDR, the Court is not empowered to take a preliminarily review. Indeed, Aetna possesses more than enough knowledge pertaining to their propriety and can, if appropriate, challenge those claims before the IDR.

See Aetna Health Inc. et al. v. Radiology Partners, Inc. et al., (M.D. Fla. Apr. 20, 2026) (Dkt. No. 105) (internal citations and quotations omitted).

The Complaint here must fall for similar reasons.

G. <u>The Complaint is an Improper Group Pleading.</u>

Courts routinely dismiss complaints as improper group pleadings. *See, e.g.*, *JD Glob. Sales, Inc. v. Jem D Int'l Partners, LP*, 2023 WL 4558885, at *7 (D.N.J. July 17, 2023). Indeed, a court will dismiss a complaint when the pleading, like here, does not place each defendant "on notice of the claims against each of them." *Id.* (quoting *Conserve v. City of Orange Twp.*, 2022 WL 1617660, at *5 (D.N.J. May 23, 2022)). This is because "mere 'conclusory allegations against defendants as a group' that 'fail[] to allege the personal involvement of any defendant' are insufficient to survive a motion to dismiss." *Bussinelli v. Twp. of Mahwah*, 2024 WL 3755914, at *3 (D.N.J. Aug. 12, 2024). "When several defendants are named in a complaint, plaintiff cannot refer to all defendants

who occupied different positions and presumably had distinct roles in the alleged misconduct without specifying which defendants engaged in what wrongful conduct" *Id*. (internal citations and quotations omitted). Indeed, Plaintiff has the affirmative obligation to "establish each individual [d]efendant's liability for the misconduct alleged." *Galicki v. New Jersey*, 2015 WL 3970297, at *2 (D.N.J. June 29, 2015).

Here, it is impossible to decipher what the five named defendants are alleged to have done *individually* in connection with each cause of action. Instead of providing that requisite clarity, Plaintiff improperly lumps all five defendants together under the group title "Rowe" and never attributes any acts or omissions to any one defendant individually. This is the exact type of pleading that courts in this district routinely dismiss on group pleading grounds as a violation of Fed. R. Civ. P. 8. To be clear, all allegations regarding the acts or omissions that purportedly gave rise to the fraud are pled as actions taking by the "Rowe" group. Below are just a few examples of this point.

- Defining all defendants "collectively as "Defendants" or "Rowe." Compl. at ¶ 1.
- "Rowe perform breast reduction surgery. By choice, they do not participate in any of Emblem's provider networks. . . . Rowe have been awarded completely irrational amounts in proceedings under the Federal No Surprise Act . . . where they have fraudulently misrepresented to Independent Dispute Resolution Entities ("IDREs") . . ." *Id.* ¶ 2.
- "Rowe also blatantly misrepresented to the IDRE that they 'attempted to negotiate a settlement' but that Emblem failed to respond." *Id.* ¶ 353.
- "Upon information and belief, Rowe engages in the fraudulent practice of 'fee forgiving' by systematically and intentionally waiving and/or failing to attempt to collect the balance due from the patients they treat who are covered by the NYC PPO Plan . . ." *Id.* ¶ 100.
- "The filing of an IDR Proceeding, in which Rowe submitted fraudulent claims and misrepresented the facts to the IDREs, was part and parcel of Rowe's fraudulent scheme…" *Id.* ¶ 416.

This amorphous nature of Plaintiff's averments is fatal to the pleading. In fact, this is one of the more egregious examples of group pleading when viewed in comparison to the pleadings

dismissed by courts in this district in the foregoing decisions.

H. Plaintiff Lacks Standing.

Dismissal is also mandated due to a lack of standing. To establish standing, a plaintiff must prove: (1) injury-in-fact, or a concrete and particularized harm to a legally protected interest; (2) causation, or a fairly traceable connection between the asserted injury-in-fact and the alleged actions of the defendant; and (3) redressability, or a non-speculative likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Here, at a minimum, Emblem cannot satisfy Article III's traceability requirement.

Traceability refers to a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. *Toll Bros., Inc. v. Twp. of Readington*, 555 F.3d 131, 142 (3d Cir. 2009). To be clear, the traceability requirement cannot be satisfied when the party's theory of injury is based on a "speculative chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). But that is exactly what Emblem alleges here. Emblem seeks to overturn IDR awards that "Rowe has procured through fraud." Compl. at ¶ 120. But Emblem has no actual knowledge as to what statements, materials, or information any defendant submitted to any IDRE because IDR is an *ex parte* process. Instead, Emblem relies on conjecture.

Make no mistake, the non-party IDREs' fact determinations and rulings were necessary in creating Emblem's alleged harm. Accordingly, the IDREs are a necessary condition of the harm's occurrence. Under the NSA, the IDREs must evaluate and issue decisions based on a strict statutory framework. The IDREs also "must review" any information submitted by the parties.

And the adversarial nature of the arbitration process creates even further uncertainty. All of this strips away any Article III traceability.

I. The Remaining Counts Fail to State a Claim Upon Which Relief Can Be Granted.

Emblem's Complaint is, at bottom, an attack on the No Surprises Act itself. While policy disagreement with the NSA is not a cognizable basis for liability, Emblem recasts that disagreement as claims for violation of the New Jersey Insurance Fraud Prevention Act ("**NJIFPA**"), and various other common law torts. None plausibly states a claim. Accordingly, the Complaint should be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(6).

1. Emblem's NJIFPA Claim Fails.

Emblem's Third Cause of Action alleges that Defendants violated the NJIFPA, N.J.S.A. 17:33A-4, by submitting insurance claims containing "materially false and misleading information," namely purportedly inflated "billable charges" for breast reduction procedures. Compl. ¶¶ 407-20. This theory fails as a matter of law.

The NJIFPA prohibits knowingly presenting, in support of a claim for payment, a false or misleading statement that is material to the claim. N.J.S.A. 17:33A-4(a). But a provider's billed charge is merely the amount the provider elects to bill—it is not a representation of market value, historical reimbursement, or the amount an insurer will actually pay. Emblem's own allegations confirm that it understood this distinction and paid only the out-of-network benefit dictated by the NYC PPO Plan, not Defendants' billed charges. *See, e.g.*, Compl. ¶¶ 131, 170. Accordingly, the billed charges were not "material" to Emblem's payment decisions, and the Complaint does not allege that Emblem paid any amount in reliance on them.

To the extent Emblem attempts to base its NJIFPA claim on alleged misrepresentations in IDR submissions, the claim independently fails under Rule 9(b). The Complaint does not identify

any specific false statement made by Defendants to the IDR entities. Instead, Emblem improperly relies on the IDREs' determinations to speculate—after the fact—about what Defendants must have represented. That is insufficient. Rule 9(b) requires a plaintiff to plead the "precise misconduct" alleged with particularity. *Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007). Although Emblem asserts that the IDR submissions are in Defendants' possession, it pleads no concrete facts supporting a plausible inference that those submissions contained specific false or misleading statements, as opposed to conclusory allegations made on information and belief. *See In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). For these reasons, the NJIFPA claim should be dismissed.

2. <u>The Unjust Enrichment Claim Fails as a Matter of Law.</u>

Plaintiff's Fourth Cause of Action alleges that Defendants were unjustly enriched by obtaining IDR awards that allegedly exceed the market value of their services. Compl. ¶¶ 421-29. This claim fails as a matter of law because the alleged conduct is governed entirely by a comprehensive statutory framework and the claim is duplicative of Plaintiff's other legal causes of action.

Under New Jersey law, unjust enrichment is unavailable where the conduct at issue is governed by a comprehensive statutory scheme providing an adequate legal remedy. *Goadby v. Phila. Elec. Co.*, 639 F.2d 117, 122 (3d Cir. 1981) ("[I]f an adequate remedy at law exists, equitable relief will not be granted."). Plaintiff's own allegations make clear that Congress established the NSA as an exclusive framework to govern payment disputes between health plans and out-of-network providers, including express statutory remedies for allegedly fraudulent or improper IDR awards. Compl. ¶¶ 54-69. Plaintiff therefore cannot evade that framework by recasting its statutory and fraud-based allegations as an equitable unjust enrichment claim.

The unjust enrichment claim also fails independently because it is impermissibly duplicative. Count IV is based on the same factual allegations and seeks the same relief as Plaintiff's claims for declaratory relief, vacatur of IDR awards, statutory fraud, and common-law fraud. Where legal claims would afford complete relief if proven, an equitable unjust enrichment claim predicated on the same conduct must be dismissed as a matter of law. *See, e.g.*, *Estate of Gleiberman v. Hartford Life Ins. Co.*, 94 Fed App'x 944, 947 (3d Cir. 2004).

3. The Common Law Fraud Claim Fails for Lack of Reliance and Particularity.

Plaintiff's Fifth Cause of Action asserts common law fraud. Compl. ¶¶ 430-46. Under New Jersey law, a plaintiff must plead a material misrepresentation, made with knowledge of falsity and intent to induce reliance, actual and reasonable reliance by the plaintiff, and resulting damages. *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 610 (1997). Plaintiff fails to plead these elements and does not satisfy Rule 9(b).

First, Emblem's admission that it "paid each of the claims in accordance with the insureds' coverage for out-of-network services under the NYC PPO Plan," (Compl. ¶ 437), undercuts its common law fraud claim premised on allegations that Defendants submitted purportedly "fraudulent and exorbitantly high" claims to Emblem. Compl. ¶ 433. Even assuming *arguendo* that Defendants had submitted fraudulent claims—which they did not—Emblem's acknowledged lack of reliance on those claims, and its payment of benefits strictly pursuant to the NYC PPO Plan, makes clear that Emblem did not rely on Defendants' claims to its detriment, as required to state a claim for fraud. *DepoLink Court Reporting & Litig. Support Servs. v. Rochman*, 430 N.J. Super. 325, 337 (App. Div. 2013).

Second, the Complaint does not plausibly allege reasonable reliance by Emblem with respect to the purported misrepresentations made to the IDREs, not to Emblem itself. Compl. ¶¶

438-41. Plaintiff's conclusory assertion that it "reasonably and justifiably relied upon the integrity of the IDR Proceedings," Compl. ¶ 443, is a legal conclusion unsupported by facts. Reliance on the general integrity of a statutory process is not reliance on a specific material misrepresentation, as New Jersey law requires. Where a misrepresentation is made to a third party, the plaintiff must allege that the defendant intended the statement to be communicated to and relied upon by the plaintiff. *Eli Lilly & Co. v. Roussel Corp.*, 23 F. Supp. 2d 460, 493 (D.N.J. 1998) (rejecting common law fraud claims premised on misrepresentations to the FDA where the plaintiff was not the intended recipient). The Complaint makes no such allegation. To the contrary, it repeatedly asserts that the IDR process is *ex parte* and designed to prevent disclosure of submissions to the opposing party. *See* Compl. ¶¶ 107-08, 440. Plaintiff therefore cannot plausibly allege reliance on representations it contends were never shared with it and for which it was not an intended recipient.

Third, the fraud claim independently fails under Rule 9(b). Plaintiff admits it has not seen Defendants' IDR submissions and pleads many alleged misrepresentations only on "information and belief." Compl. ¶¶ 53, 165, 197, 219, 248, 374. Although Rule 9(b) may be relaxed where facts are exclusively within a defendant's control, a plaintiff must still allege specific facts showing that the claim is not speculative. *Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 645-46 (3d Cir. 1989). Plaintiff does not do so. Instead, it infers fraud solely from IDRE decision summaries and unfavorable outcomes. Reasoning backward from an adverse result to presume fraud is insufficient under Rule 9(b) and *Twombly* and *Iqbal*. *See Frederico v. Home Depot*, 507 F.3d 188, 200-01 (3d Cir. 2007).

4. <u>Negligent Misrepresentation Fails for Lack of Reliance, Duty & Particularity.</u>

Plaintiff's Sixth Cause of Action, pleaded in the alternative, asserts negligent misrepresentation. Compl. ¶¶ 447-51. Under New Jersey law, a negligent misrepresentation claim

requires an incorrect statement, negligently made and justifiably relied upon, resulting in damages. *H. Rosenblum, Inc. v. Adler*, 93 N.J. 324, 334 (1983); *Indian Brand Farms, Inc. v. Novartis Crop Prot., Inc.*, 617 F.3d 207, 218 (3d Cir. 2010). The claim fails for multiple independent reasons.

As with its fraud claim, Plaintiff does not plausibly allege justifiable reliance. The alleged misrepresentations were directed to the IDREs, not to Emblem, and the Complaint does not allege that Emblem itself relied on any specific incorrect statement. Further, Emblem affirmatively admits that it paid the claims in accordance with the insureds' out-of-network benefits under the NYC PPO Plan, rather than in reliance on Defendants' submissions. These reliance deficiencies are fatal to a negligent misrepresentation claim as well.

The claim also fails because the negligent misrepresentation claim is grounded in the same alleged misstatements and deceptive conduct underlying Plaintiff's fraud theories, it is subject to Rule 9(b)'s heightened pleading standard. *Travelers Indem. Co. v. Cephalon, Inc.*, 620 Fed. App'x 82, 85 n.3 (3d Cir. 2015). For the reasons discussed herein, the Complaint does not plead the allegedly misleading statements with the required particularity, providing an additional and independent basis for dismissal.

For the foregoing reasons, Plaintiff's Complaint fails to state a claim upon which relief can be granted. Each of the six causes of action is deficient under the governing plausibility standard, and the fraud-based claims additionally fail to satisfy the heightened pleading requirements of Rule 9(b). Accordingly, Defendants respectfully request that the Court dismiss the Complaint in its entirety with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

J. <u>All Claims Against Dr. Rowe Individually Fail.</u>

All claims against Dr. Rowe individually must be also dismissed because Emblem does not and cannot allege that Dr. Rowe was a party to the underlying IDR proceedings. Indeed, Dr.

Rowe was not a party to any arbitration—and the Complaint does not plead otherwise. Nor is it alleged that Dr. Rowe did anything in his individual capacity other than provide medical services. That Plaintiff not only named Dr. Rowe in this suit—but listed him as a lead defendant—despite these glaring omissions indicates a clear motive of harassment.

K. Discovery Should Be Stayed Pending Adjudication of This Motion.

The numerous insufficiencies of the Complaint support a stay of discovery pending adjudication of this Motion. "Indeed, one of the purposes of Rule 12(b)(6) and Rule 9(b) is to determine if plaintiff has made sufficient allegations to require the defendant to endure the burden and expense of the discovery process." *Weiss v. First Unum Life Ins*., 2003 WL 25713970, at *8 (D.N.J. Aug. 27, 2003). Thus, "the purpose of Rule 12(b)(6) is to 'streamline[ ] litigation by dispensing with needless discovery and factfinding,'" *Mann v. Brenner*, 375 F. App'x 232 (3rd Cir. 2010); *Chudasama v. Mazda Motor Corp*., 123 F.3d 1353, 1367 (11th Cir.1997) ("A motion to dismiss based on failure to state a claim for relief should ... be resolved before discovery begins."); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (discovery before deciding a motion to dismiss "is unsupported and defies common sense [because t]he purpose of F.R. Civ. P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery").

This is particularly true when there is a serious question of subject matter jurisdiction and standing. *Mann*, 375 Fed. App'x at 239 (discovery stay is appropriate where resolution of pending motion would render discovery futile).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant this Motion to dismiss with prejudice and that discovery be stayed pending the Court's adjudication of same.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of Defendants' Motion to Dismiss and for a Stay of Discovery, as well as all accompanying documents, were served on the all counsel of record via CM/ECF on this 13th day of May 2026.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMBLEMHEALTH, INC., Plaintiff, -against- NORMAN M. ROWE, M.D., NORMAN M. ROWE, M.D. PLLC, NORMAN M. ROWE MD OF NEW JERSEY LLC, ROWE PLASTIC SURGERY OF NEW JESREY LLC, and EAST COAST PLASTIC SURGERY PLLC PA, Defendants.	Case No. 26-cv-3311 *DOCUMENT ELECTRONICALLY FILED*

DECLARATION OF STEVEN I. ADLER
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I, STEVEN I. ADLER, ESQ., of full age, hereby state as follows:

1. I am an attorney at law in the State of New Jersey and Partner at the law firm of Mandelbaum Barrett P.C.

2. I submit this Declaration in support of defendants Norman M. Rowe, M.D. ("**Dr. Rowe**"), Norman M. Rowe, M.D. PLLC ("**Rowe M.D. PLLC**"), Norman M. Rowe MD of New Jersey LLC ("**Rowe LLC**"), Rowe Plastic Surgery of New Jersey LLC ("**RPSNJ**"), and East Coast Plastic Surgery PLLC PA's ("**ECPS**") (collectively and hereinafter, the "**Defendants**") motion ("**Motion**") to dismiss the complaint ("**Complaint**") of plaintiff EmblemHealth, Inc. ("**Plaintiff**" or "**Emblem**") pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6); and motion to stay discovery pending the Court's Rule 12 adjudication.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the court's decision granting a motion to dismiss in *Modern Anthem Blue Cross et al. v. HaloMD LLC*, 8:25-cv-01467 (C.D. Cal. April 9, 2026) (Dkt. No. 135).

4. Attached hereto as **Exhibit 2** are true and correct copy of the court's decision granting a motion to dismiss in *Aetna Health Inc. et al. v. Radiology Partners, Inc. et al*., (M.D. Fla. April 20, 2026) (Dkt. No. 105).

I declare under the laws of the United States of America that the foregoing is true and correct.

Dated: May 13, 2026

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EXHIBIT 1

O

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY, et al.,

Plaintiffs,

v.

HALOMD LLC, et al.,

Defendants.

Case No. 8:25-cv-01467-KES

MEMORANDUM OPINION AND ORDER

I.

INTRODUCTION

In July 2025, Anthem Blue Cross Life and Health Insurance Company and Blue Cross of California d/b/a Anthem Blue Cross ("Plaintiffs" or "Anthem") filed this civil lawsuit. (Dkt. 1.) The operative First Amended Complaint ("FAC" at Dkt. 50) names the following Defendants:

(1) HaloMD, LLC ("HaloMD") and its president, Alla LaRoque (collectively, the "HaloMD Defendants");

(2) MPOWERHealth Practice Management, LLC and its CEO, Scott LaRoque (collectively, the "MPOWERHealth Defendants");

(3) Bruin Neurophysiology, P.C.; iNeurology, PC; N Express, PC; and

North American Neurological Associates, PC (collectively, the "LaRoque Family Providers");

(4) Sound Physicians Emergency Medicine of Southern California, P.C. and Sound Physicians Anesthesiology of California, P.C. (collectively, the "Sound Physicians Providers").

(FAC at 2.)

Plaintiffs' claims arise out of the mandatory, independent dispute resolution ("IDR") process to resolve certain types of billing disputes between health plans and out-of-network providers established by the federal No Suprises Act ("NSA"). The FAC provides this overview of the NSA's IDR process:

> [T]he NSA created a separate framework outside the judicial process for health plans and providers to resolve specific types of eligible surprise billing disputes. See 42 U.S.C. § 300gg-111(c). The framework consists of (1) open negotiations—a required 30-business-day period to try resolving the dispute informally; (2) an IDR process for "qualified IDR items and services" if no agreement is reached; and (3) if applicable, a payment determination from private parties called certified IDR entities ("IDREs").

(FAC at 12, ¶ 43.)

Most of the Defendants are healthcare providers. HaloMD "initiates and administers IDR proceedings on behalf of healthcare providers" like the other Defendants. (Id. at 4, ¶ 6.)

The FAC asserts the following federal claims:

Count One: Violations of the Racketeering Influenced and Corruption Organizations Act ("RICO"), 18 U.S.C. § 1962(d), against the LaRoque Family Providers, the HaloMD Defendants, and the MPOWERHealth Defendants (alleged to be the "LaRoque Family Enterprise"), based on allegations that these Defendants engaged in mail and wire fraud, or conspired in such fraud, by submitting billing disputes to the IDR process that they knew were ineligible, accompanied by false attestations of eligibility. (Id. at 3, ¶ 3; id. at 24, ¶ 93.)

Count Two: Similar violations of RICO, 18 U.S.C. § 1962(d), against the Sound Physicians Providers and HaloMD (alleged to be the "Sound Physicians Enterprise").

Count Three: Similar violations of RICO, 18 U.S.C. § 1962(c), against the LaRoque Family Enterprise.

Count Four: Similar violations of RICO, 18 U.S.C. § 1962(c), against the Sound Physicians Enterprise.

Count Eleven: Vacatur of IDR determinations under the NSA, 42 U.S.C. § 300gg-111(c)(5)(E), against all Defendants.

Count Twelve: Equitable relief under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3).

Count Thirteen: Declaratory and injunctive relief.

The FAC asserts the following state law claims:

Count Five: Fraudulent misrepresentation against all members of the LaRoque Family Enterprise.

Count Six: Fraudulent misrepresentation against all members of the Sound Physicians Enterprise.

Count Seven: Negligent misrepresentation against all members of the LaRoque Family Enterprise.

Count Eight: Negligent misrepresentation against all members of the Sound Physicians Enterprise.

Count Nine: Violations of the Unfair Competition Law ("UCL") at California Business & Professions Code §§ 17200 et seq. against all members of the LaRoque Family Enterprise.

Count Ten: Violations of the UCL against all members of the Sound Physicians Enterprise.

Defendants responded to the FAC by filing the following motions:

/ / /

Dkt.	Motion	Movants	Briefs[1]
69	Motion to Dismiss FRCP 12(b)(1) & (6)	Sound Physicians Providers	Oppo: 93 Reply: 117
72	Motion to Dismiss FRCP 12(b)(2)	MPOWERHealth Practice Management, LLC	Oppo: 93 Reply: 123
73	Motion to Dismiss FRCP 12(b)(6)	MPOWERHealth Practice Management, LLC and LaRoque Family Providers	Oppo: 93 Reply: 124
76	Motion to Dismiss FRCP 12(b)(1), (2) & (6)	HaloMD	Oppo: 93 Reply: 120
77	Motion to Dismiss FRCP 12(b)(1), (2) & (6)	Alla & Scott Laroque	Oppo: 93 Reply: 121
68	Special Motion to Strike (Anti-SLAPP)	Sound Physicians Providers	Oppo: 92 Reply: 118
78	Special Motion to Strike (Anti-SLAPP)	HaloMD Defendants	Oppo: 92 Reply: 122
74	Joinder in Dkt. 68 & 78	MPOWERHealth Practice Management, LLC and LaRoque Family Providers	See above

On March 10, 2026, the Court held oral argument. (Dkt. 127 (minutes); Dkt. 132 (hearing transcript); Dkt. 134 (presentation decks).) For reasons explained in detail below, the Court:

(1) GRANTS, without leave to amend, the motions to dismiss brought under Federal Rule of Civil Procedure 12(b)(6) challenging Count Eleven for vacatur (Dkt. 69, 73, 76, 77), because the facts alleged in the FAC establish no authorized basis for the district court to vacate any IDR determinations;

(2) GRANTS, without leave to amend, the motions to dismiss brought under Federal Rule of Civil Procedure 12(b)(1) asserting lack of subject matter jurisdiction over the remaining federal claims (Dkt. 69, 76, 77)

[1] In addition to the briefs listed in the chart, the Court reviewed amicus briefs filed at Dkt. 80-1, 99, and 101.

because, aside from vacatur authorized by 42 U.S.C. § 300gg111(c)(5)(E)(i)(II), the NSA precludes judicial review of IDR determinations, regardless of the legal theory under which judicial review is sought;

(3) DECLINES to exercise supplemental jurisdiction over the FAC's state law claims and DISMISSES them without prejudice (see 28 U.S.C. § 1367(c)); and

(4) DENIES, without prejudice, the anti-SLAPP motions to strike the state law claims (Dkt. 68, 74, 78) as moot because the Court dismissed the state law claims rather than exercising supplemental jurisdiction.

II.

SUMMARY OF THE FAC'S FACTUAL ALLEGATIONS

A. The NSA's IDR Process.

"Effective January 1, 2022, the NSA banned surprise billing for three categories of out-of-network care: (1) emergency services; (2) non-emergency services at in-network facilities; and (3) air ambulance services. See 42 U.S.C. §§ 300gg-131, 300gg-132, 300gg-135." (FAC at 12, ¶ 42.) When a health plan like Anthem receives a claim for out-of-network services subject to the NSA …, the health plan is supposed to make "an initial payment or issue a notice of denial of payment within 30 days. See 42 U.S.C. § 300gg-111(a)(1)(C)(iv)(I)." (Id. ¶ 44.)

"If the provider is dissatisfied with the initial payment, then the provider or its designee may initiate open negotiations with the health plan by providing formal written notice to the health plan within 30 business days of the initial payment or notice of denial. 42 U.S.C. § 300gg-111(c)(1)(A)." (Id. ¶ 45.) "After initiating open negotiations, the provider must attempt in good faith to negotiate a resolution with the health plan over the 30-business-day open negotiations period." (Id. at 12-13, ¶ 45.) "If the provider initiates and exhausts the 30-day open negotiations period, and 'the open negotiations … do not result in a determination

of an amount of payment for [the] item or service,' then the provider may initiate the IDR process. See 42 U.S.C. § 300gg-111(c)(1)(B); 45 C.F.R. § 149.510(b)(2)(i)." (Id. at 13, ¶ 46.) Providers must initiate the IDR process within four business days after exhausting the open negotiations period. (Id.)

"When initiating the IDR process, providers must, among other things, submit an attestation that the items and services in dispute are qualified IDR items or services within the scope of the IDR process." (Id. at 15, ¶ 53.) To be qualified, the following conditions must be met:

a. The underlying services are within the NSA's scope, meaning they are out-of-network emergency services, non-emergency services at participating facilities, or air ambulance services;

b. The services involve a patient with healthcare coverage through a group plan or health insurer subject to the NSA (e.g., not coverage through government programs like Medicare or Medicaid);

c. A state surprise billing law (referred to as a "specified state law" in the NSA) does not apply to the dispute;

d. The underlying services were covered by the patient's health benefit plan (i.e., payment was not denied);

e. The patient did not waive the NSA's balance billing protections;

f. The provider initiated and exhausted open negotiations;

g. The provider initiated the IDR process within 4 business days after the open negotiations period was exhausted; and

h. The provider has not had a previous IDR determination on the same services and against the same payor in the previous 90 calendar days.

(Id. at 13-14, ¶ 48 (citing 42 U.S.C. § 300gg-111(c)(1)(B); 45 C.F.R. § 149.510(a)(2)(xi), (b)(2)).)

Providers initiating the IDR process must do so "online through a federal

'IDR Portal.'" (Id. at 16, ¶ 54.) The initiating party must agree to certain terms and conditions, including a notice that they will need to submit an "[a]ttestation that qualified IDR items or services are within the scope of the Federal IDR process." (Id. ¶ 58.) "After agreeing to the terms and conditions, initiating parties must answer certain 'Qualification Questions' through an online form. If the answers to the Qualification Questions indicate that the dispute is not eligible for IDR, the form will provide an alert and prevent the initiating party from proceeding." (Id. at 17, ¶ 59.) "After successfully completing the Qualification Questions, the initiating party is asked to complete the Notice of IDR Initiation Form," which requires inputting "a variety of relevant information." (Id. at 18, ¶ 63.) At the end of this process, the initiating party must attest, via electronic signature, that the "item(s) and/or service(s) at issue are qualified item(s) and/or services(s) within the scope of the Federal IDR process." (Id. ¶ 64.)

A copy of the Notice of IDR Initiation is sent electronically to "the non-initiating party (i.e., the health plan), the IDRE, and the Departments."[2] (Id. ¶ 65.) "[T]he parties select, or HHS appoints, an IDRE. 42 U.S.C. § 300gg-111(c)(4)(F)." (Id. at 19-20, ¶ 72.) The IDRE is directed by regulation to "'determine whether the Federal IDR process applies.' 45 C.F.R. § 149.510(c)(1)(v)." (Id. at 20, ¶ 73.) Guidance published by the government agencies that oversee the IDR process instruct non-initiating parties who believe that the IDR process does not apply how to submit relevant information through the portal. (Dkt. 76-5 at 18, § 5.5.[3]) The

[2] The FAC defines the "Departments" as the Department of Health and Human Services ("HSS"), the Department of Labor, and the Department of the Treasury. (FAC at 15 n.9.) The Centers for Medicare & Medicaid Services ("CMS") is the federal agency within HSS primarily charged with implementing the IDR process. (Id. ¶ 52.)

[3] The Court GRANTS the request for judicial notice (Dkt. 76-2) and considers the guidance documents as a factual description of how the IDR process is supposed to work, not as evidence of how it actually worked for any particular

IDRE "must determine whether the Federal IDR Process is applicable." (Id.) IDREs can and do reject some disputes as ineligible for IDR. (FAC at 22, ¶ 80 (citing 42 U.S.C. § 300gg-111(c)(5)(F)).)

"[I]f the IDRE determines the IDR process applies, then the IDRE proceeds to a payment determination. 42 U.S.C. § 300gg-111(c)(5)(A)." (Id. at 20, ¶ 74.) "IDR payment determinations resemble a baseball-style dispute resolution where the provider and health plan each submit an offer, and the IDRE selects one party's offer as the out-of-network rate. 42 U.S.C. § 300gg-111(c)(5)(B)." (Id. ¶ 75.) "An IDR determination for a 'qualified IDR item or service' is 'binding' unless there was 'a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim[.]' 42 U.S.C. § 300gg-111(c)(5)(E)(i)." (Id. at 21, ¶ 77.) There is, however, a "process for reopening disputes to correct errors" and rescind payment determinations, including errors in eligibility determinations. (Dkt. 76-8 at 2, 4.) Additionally, the government can revoke an IDRE's certification for submitting false data or exhibiting a "pattern or practice of noncompliance" with the applicable requirements. (Dkt. 76-6 at 37, § 12.)

"Parties to IDR proceedings are responsible for payment of two fees. First, both parties must pay a non-refundable administrative fee—currently $115—when the dispute is initiated. This fee is not recoverable even when the IDRE determines that the dispute does not qualify for IDR, or even when the initiating party later voluntarily withdraws the dispute. Second, both parties must pay an IDRE fee before the IDRE makes the payment determination. The IDRE fee is set by the specific IDRE and depends on the type of IDR submitted, but ranges from $200 to $1,173." (FAC at 21, ¶ 79.) The non-prevailing party is responsible for paying both its administrative fee and the whole IDRE fee. (Id. at 21-22, ¶ 79.)

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billing dispute.

B. Defendants' Alleged Wrongdoing.

Plaintiffs allege that Defendants use three "tactics" to turn the NSA's IDR process "into a vehicle for fraud." (Id. at 25, ¶ 94.) First, "Defendants manipulate the IDR process by strategically submitting massive numbers of open negotiations and IDR initiations—hundreds of which are patently ineligible for IDR—in an attempt to overwhelm the ability of health plans like Anthem to contest claims, confuse and swamp IDREs, and manipulate the IDR process." (Id. at 24, ¶ 93.) The NSA does not impose a numeric limit on IDR claims, but it does have batching rules. (Id. at 53, ¶ 226; Dkt. 76-5 at 22, § 6.1.3.)

Second, "Defendants capitalize on flaws in the IDR process by submitting—and often prevailing with—outrageous payment offers that they could never receive on the open market, including many that exceed the Provider Defendants'[4] own billed charges." (FAC at 24, ¶ 93.) As discussed above, the mandatory IDR process is a baseball-style arbitration where the IDRE must pick the more reasonable number based on certain authorized considerations. (Id. at 20, ¶ 75.)

Third, "Defendants make repeated false statements, representations, and attestations of eligibility to Anthem, the IDREs, and the Departments" via the submission portal. (Id. at 24, ¶ 93.) Plaintiffs allege that between January 2024 and August 2025, Defendants initiated at least 1,500 IDR proceedings against Anthem consisting of more than 2,000 separate services. (Id. at 32-33, ¶ 127.) Plaintiffs "determined that approximately 47 percent of these disputes were ineligible for IDR …." (Id. at 33, ¶ 128.) But in many of those cases, the IDREs found the claim eligibility despite Anthem's evidence, so "Defendants illicitly secured millions of dollars in improper IDR awards." (Id.) Plaintiffs allege that the IDREs routinely make errors in eligibility determinations because (1) they are

[4] The FAC defines "Provider Defendants" to include the LaRoque Family Providers and the Sound Physicians Providers. (FAC at 2.)

only compensated when a dispute reaches a payment determination, and (2) they are overwhelmed by a "staggering volume of disputes" and "cannot complete fulsome reviews [of eligibility evidence] in the timeline provided by the NSA." (Id. at 22, ¶ 80; id. at 28, ¶¶ 105-06.)

The FAC describes the following eleven IDR determinations as examples of outcomes that IDREs wrongly decided because of these tactics:

	No.	Defendant	Ineligibility Reason
1	DISP-918898	Bruin Neuro-physiology	Plaintiff Anthem Blue Cross Life and Health Insurance Company ("ABCLH") "submitted an objection to eligibility asserting that Bruin had not filed its IDR proceeding within the required time." FAC at 44, ¶ 171.
2	DISP-1455557	North American Neurological Associates ("NANA")	"Anthem Payment Disputes, on behalf of ABCLH, submitted an objection to eligibility" stating that NANA "failed to engage in the 30-business day open negotiation period." Id. at 44-45, ¶ 176.
3	DISP-1455555	NANA	Same as above. Id. at 45-46, ¶ 181.
4	DISP-2193991	N Express	Plaintiff Anthem Blue Cross ("ABC") "submitted an objection to eligibility" stating that the claim was "ineligible for IDR under the NSA because a state surprise billing law applies." Id. at 46-47, ¶ 187.
5	DISP-2193967	N Express	Same as above. Id. at 47, ¶ 193.
6	DISP-945678	N Express	Same as above. Id. at 48, ¶ 199.
7	DISP-937342	iNeurology	ABC told HaloMD that the service was ineligible because it was "a service for which no plan benefits were payable in the first place," but HaloMD still initiated IDR. Id. at 49, ¶¶ 203-05.
8	DISP-932222	Sound Physicians Emergency Medicine of Southern California ("SPEMSC")	"The notice of open negotiation attached a spreadsheet with dozens of claims …." Id. at 53, ¶ 226. The claims were for services "rendered to members of self-funded Anthem plans and non-Anthem plans in addition to the services rendered to a member of a fully insured Anthem plan." Id. at 54, ¶ 227. Plaintiffs

			objected to the IDR initiation, stating, "Batched services include multiple Membership types." Id. ¶ 228.
9	DISP-1289721	SPEMSC	ABC "submitted an objection to eligibility" stating that the claim was "ineligible for IDR under the NSA because it involved a Medicare/ Medicaid claim …." Id. at 55, ¶ 234.
10	DISP-1568233	SPEMSC	ABCLH "submitted an objection to eligibility" stating that the claim was ineligible for IDR under the NSA because "a state surprise billing law applies." Id. at 56, ¶ 240.
11	DISP-2639953	Sound Physicians Anesthesiology of California	ABC "submitted an objection to eligibility" stating that the claim was ineligible for IDR under the NSA because "a state surprise billing law applies." Id. at 57, ¶ 247.

III.

DISCUSSION

A. Count Eleven: Vacatur.

1. Applicable Law.

The NSA's provision for baseball-style arbitration requires the IDRE to select one of the party's offers to resolve qualified IDR billing disputes, as follows:

> (5) Payment Determination
>
> (A) In general
>
> Not later than 30 days after the date of selection of the certified IDR entity with respect to a determination for a qualified IDR item or service, the certified IDR entity shall—
>
> (i) taking into account the considerations specified in subparagraph (C), select one of the offers submitted under subparagraph (B) to be the amount of payment for such item or service determined under this subsection for purposes of subsection (a)(1) or (b)(1), as applicable; and
>
> (ii) notify the provider or facility and the group health plan or health insurance issuer offering group or individual health insurance coverage party to such determination of the offer selected under clause (i).

42 U.S.C. § 300gg111(c)(5)(A).

The NSA limits judicial review of IDRE determinations, as follows:

> (E) Effects of determination
> (i) In general
> A determination of a certified IDR entity under subparagraph (A) —
> (I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and
> (II) ***shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9***.

42 U.S.C. § 300gg111(c)(5)(E)(i) (emphasis added). The reference to "paragraphs (1) through (4) of section 10(a) of title 9" is a reference to the Federal Arbitration Act ("FAA"). Those paragraphs describe the four circumstances under which a district court can vacate an arbitrator's award under the FAA, as follows:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
> (1) where the award was procured by corruption, ***fraud***, or ***undue means***;
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
> (4) where ***the arbitrators exceeded their powers***, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a)(1)-(4) (emphasis added to identify the grounds for vacatur alleged in the FAC at 85, ¶¶ 357-58).

While the NSA is a recent law, Congress enacted the FAA years ago. As a result, case law defines what circumstances satisfy subparagraphs (1) and (4). A party moving for vacatur under § 10(a)(1) must establish: (1) fraud, by clear and convincing evidence, (2) which was not discoverable upon the exercise of due

diligence prior to or during the arbitration, and (3) which was materially related to an issue in the arbitration. Pac. & Arctic Ry. & Navigation Co. v. United Transp. Union, 952 F.2d 1144, 1148 (9th Cir. 1991). "[W]here the fraud or undue means is not only discoverable, but discovered and brought to the attention of the arbitrators, a disappointed party will not be given a second bite at the apple." A.G. Edwards & Sons, Inc. v. McCollough, 967 F.2d 1401, 1404 (9th Cir. 1992).

"Undue means" in the context of § 10(a)(1) refers to conduct that "is immoral if not illegal." Id. at 1403. Vacatur under this provision "requires a showing of bad faith during the arbitration proceedings, such as bribery, undisclosed bias of the arbitrator, or willfully destroying evidence, and further requires that such evidence of fraud was unavailable to the arbitrator during the course of the proceeding." Dandong Shuguang Axel Corp. v. Brilliance Mach. Co., No. C 00-4480 SC, 2001 WL 637446, at *5, 2001 U.S. Dist. LEXIS 7493, at *18 (N.D. Cal. June 1, 2001) (citation omitted). Like fraud, the undue means must be (1) not discoverable upon the exercise of due diligence prior to or during the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear and convincing evidence. A.G. Edwards, 967 F.2d at 1404.

For vacatur under § 10(a)(4), arbitrators "exceed their powers when they express a 'manifest disregard of law,' or when they issue an award that is 'completely irrational.'" Bosack v. Soward, 586 F.3d 1096, 1104 (9th Cir. 2009) (citation omitted). "For an arbitrator's award to be in manifest disregard of the law, it must be clear from the record that the arbitrator recognized the applicable law and then ignored it." Id. (citation modified). Mere "misinterpretations of the law" do not justify vacatur. French v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 784 F.2d 902, 906 (9th Cir. 1986).

Sometimes an arbitration agreement delegates the issue of arbitrability to the arbitrator. When that happens, "the arbitrator's interpretation of the scope of his powers is entitled to the same level of deference as his determination on the

merits." See Schoenduve Corp. v. Lucent Techs., Inc., 442 F.3d 727, 733 (9th Cir. 2006).

2. Relevant Allegations.

Plaintiffs seek "vacatur of individual IDR determinations under 42 U.S.C. § 300gg-111(c)(5)(E)" because "[e]ach individual IDR determination at issue" was procured by fraud and undue means in the form of false eligibility attestations, and "the IDREs exceeded their powers by issuing payment determinations on items and services that are not qualified IDR items and services within the scope of the NSA's IDR process." (FAC at 85, ¶¶ 356-58.) Plaintiffs do not list all the IDR determinations they seek to vacate, but they allege that "the list of IDR payment determinations subject to vacatur is expected to increase during the pendency of the case." (Id. ¶ 359.) Plaintiffs pray for "vacatur of the underlying IDR determinations." (Id. at 88 (prayer for relief).)

3. Analysis.

Plaintiffs argue, "Anthem is seeking judicial review of Defendants' NSA Schemes, and not any individual IDRE payment determination." (Dkt. 93 at 48.) But Plaintiffs' claim for vacatur, while pled in the alternative, seeks to vacate "each individual IDR determination at issue." (FAC at 85, ¶ 356.) Plaintiffs' other fraud-based claims, like RICO, could not be litigated without deciding whether Defendants made false eligibility attestations, a decision that would necessarily re-examine eligibility determinations made by IDREs.

a. Fraud.

First, Plaintiffs urge the Court not to follow the above-cited Ninth Circuit cases and instead look to Eleventh Circuit cases. (Dkt. 93 at 49.) But Ninth Circuit cases are binding on this district court.

Next, Plaintiffs argue that the requirements discussed in Pacific & Artic Railway and A.G. Edwards cannot be fairly applied to the NSA IDR process because the Ninth Circuit test "presumes the existence of an opportunity to litigate

the alleged fraud" before the arbitrator. (Id.) Plaintiffs did not allege facts showing that Anthem cannot litigate eligibility within the IDR process. Indeed, the FAC's allegations show that participants in the IDR process can tell the IDRE if they believe a dispute is ineligible and why. (FAC at 30, ¶¶ 115, 118 (describing how Anthem objects to unqualified items).) "The baseball-style dispute resolution process … is premised on the notion that ineligible claims will be weeded out at the outset." (Id. at 30, ¶ 113; see also Dkt. 76-5 at 18, § 5.5 ("If the non-initiating party believes that the Federal IDR Process is not applicable, the non-initiating party must notify the Departments by submitting the relevant information through the Federal IDR portal as part of the certified IDR entity selection process.").

Plaintiffs objected to eligibility for all the sample determinations identified in the FAC and summarized in the chart on pages 10 to 11, above. IDREs are instructed that they "must determine whether the Federal IDR Process is applicable." (Dkt. 76-5 at 18, § 5.5.) IDREs can, and sometimes do, determine that a billing dispute is not eligible. (FAC at 30, ¶ 115 (alleging that most, but not all, of "Defendants' ineligible disputes reach a payment determination" despite "Anthem's objections").)

Plaintiffs point to procedural rules for arbitration in other forums, such as rules providing for in-person hearings, cross-examination, and written decisions explaining the arbitrator's reasoning. (Dkt. 93 at 49.) But such procedures are not necessary to bring allegedly fraudulent eligibility attestations to an IDRE's attention. If the Court were to adopt Plaintiffs' position, then nearly every eligibility determination disputed by an IDR participant would be subject to review in federal court. That would be inconsistent with the NSA's creation of a streamlined IDR process for resolving surprise billing disputes and its limitations on judicial review.

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. (Dkt. 69-1 at 22.) 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.

b. Undue Means.

Plaintiffs argue that the IDREs are "financially incentivized" to disregard objections to eligibility. (Dkt. 93 at 50.) The FAC describes how IDREs only receive fees if they find a dispute eligible. (FAC at 22, ¶ 80; id. at 30, ¶ 116.) But this fee structure is part of the IDR rules established by Congress. See 42 U.S.C. § 300gg-111(c)(5)(F). Such financial incentives are not akin to bad faith or bribery. In any event, the FAC does not allege that improper financial incentives motivated an IDRE's decision-making for any particular award. Plaintiffs have not suggested that they could amend and add such facts.

c. Excess of Authority.

Plaintiffs argue that they are "entitled to judicial review where, as here, the IDREs 'exceeded their powers' by issuing payment determinations on disputes that were ineligible for IDR." (Dkt. 93 at 48.) The FAC alleges that IDREs issued hundreds of payment determinations for services that were not a qualified IDR item or service. (FAC at 33, ¶ 128 (referring to 47% of 1,500 IDR proceedings).)

The IDREs, however, are authorized to decide eligibility. "First, the IDRE is directed by regulation (though not by the Act itself) to 'determine whether the Federal IDR process applies.' 45 C.F.R. § 149.510(c)(1)(v)." (Id. at 20, ¶ 73.) It makes no difference whether the directive to first determine eligibility is in the NSA's text or the implementing regulations.

The moving parties cite Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., 160 F.4th 1110, 1114 (11th Cir. 2025). In that case, a medical service

provider (an air ambulance) challenged an IDR award in which the IDRE chose Kaiser's number. Reach Air, 160 F.4th at 1114-15. The air ambulance company sued to vacate the award under § 10(a)(4), alleging that the IDRE exceeded its authority "by applying an illegal presumption in favor of Kaiser." Id. at 1119. The Eleventh Circuit noted, "An arbitrator's actual reasoning is of such little importance to our review that it need not be explained …. Our sole question under § 10(a)(4) is whether the arbitrator (even arguably) performed the assigned task, not whether she got the outcome right or wrong." Id. at 1120 (citation modified). The examples given included "awarding relief on a statutory claim when the arbitration agreement allows only for arbitration of contractual claims" or "failing to give preclusive effect to an issue previously decided by a court." Id.

Here, Plaintiffs argue that IDREs have issued awards for ineligible claims and thus strayed from their "assigned task." (Dkt. 93 at 48 n.11.) But movants counter that part of the IDREs' assigned task is to decide eligibility. (Dkt. 117 at 19.) Plaintiffs do not (and cannot) allege that IDREs failed to rule in Anthem's favor in the complete absence of factual support for eligibility, because Plaintiffs allege that Defendants consistently represent (albeit falsely) to the IDREs that the claims are eligible. (FAC at 3, ¶ 3; id. at 23, ¶ 90.) Such allegations collapse the analysis under § 10(a)(4) into the same test as § 10(a)(1). Plaintiffs raised Defendants' allegedly false eligibility attestations to the IDREs, and the IDREs were authorized to determine eligibility. This means that judicial review of the IDREs' eligibility determinations premised on the same allegedly false eligibility attestations is not available. Pac. & Arctic Ry., 952 F.2d at 1148.

Because Plaintiffs' allegations do not meet the substantive requirements for claiming vacatur under 9 U.S.C. § 10(a)(1) or (4), the Court need not decide whether any of the FAA's procedural requirements for seeking vacatur (like timing and

venue) apply to claims seeking vacatur of NSA IDRE determinations.[5]

B. Subject Matter Jurisdiction over Remaining Federal Counts (1-4, 12, 13).

Movants argue that the NSA's above-discussed limitations on judicial review bar the Court from exercising subject matter jurisdiction over Plaintiffs' other federal claims, because those claims seek review of IDRE determinations, regardless of the legal label. (Dkt. 69-1 at 26.) None of Plaintiffs' responses to this argument (discussed below) are persuasive.

1. The Statutory Interpretation Argument.

In a novel argument unsupported by any case law, Plaintiffs contend that the NSA's limitations on judicial review apply only to "[a] determination of a certified IDR entity ***under subparagraph (A)***," and subparagraph (A) refers only to payment determinations, not eligibility determinations. (Dkt. 93 at 43 (emphasis added).) But as set forth in full above, subparagraph (A) refers to "a determination for a qualified IDR item or service." 42 U.S.C. § 300gg111(c)(5)(A). An IDRE's payment determination necessarily includes a determination of eligibility. Plaintiffs' proposed reading of 42 U.S.C. § 300gg111(c)(5)(E)(i), which would impose *no* limits on judicial review of IDREs' eligibility determinations, would be clearly contrary to the streamlined dispute resolution process that Congress intended when it created the NSA's IDR process.

2. The Policy Argument.

Next, Plaintiffs urge the Court not to apply the NSA's limits on judicial review because the IDR process is deeply flawed and there is no readily available remedy for erroneous IDR awards. (Dkt. 93 at 23-27.) But such policy-based arguments would be better directed at Congress which alone has the power to

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[5] Count Eleven also fails because the alleged fraud is not pled with specificity as to every challenged IDR determination, as required by Federal Rule of Civil Procedure 9(b). This order does not rely on Rule 9(b), because non-compliance with Rule 9(b) could potentially be cured by amendment.

rewrite the NSA. Moreover, the FAC alleges that false attestations to the federal government can violate 18 U.S.C. § 1001, providing a strong incentive against making false attestations. (FAC at 18-19, ¶ 67.)

3. The "Outside the Scope" Argument.

Next, Plaintiffs argue that the NSA's limits on judicial review apply only to claims seeking to vacate IDR awards, but Plaintiffs' claims for monetary damages for time spent addressing fraudulent submissions and for prospective injunctive relief can be adjudicated without reviewing any IDR awards. (Dkt. 93 at 51-52.) Therefore, Plaintiffs argue that their claims fall outside the scope of the NSA's jurisdiction-stripping provisions. (Id.)

Plaintiffs' federal claims cannot be adjudicated without reviewing the correctness of past IDR awards or inserting the district court in overseeing future IDR awards. The district court could not, for example, award damages measured by time spent addressing a fraudulent eligibility attestation without first deciding that the eligibility attestation was false. Similarly, the district court could not order Defendants to pay damages measured by IDR administrative fees for disputes ineligible for the IDR process without first deciding that the dispute was ineligible for IDR. 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.

4. The "Other Statutory Basis" Argument.

Plaintiffs argue that jurisdiction to hear its federal claims is conferred by ERISA or the federal Declaratory Judgment Act. (Dkt. 93 at 84.) These laws generally provide that district courts can hear certain kinds of claims, but neither specifically allows claims that require judicial review of IDR awards, as Plaintiffs'

federal claims do. These federal laws' general jurisdictional language does not supplant the NSA's specific limitations on judicial review.

C. Supplemental Jurisdiction over Counts 5-10.

The Court has discretion to exercise supplemental jurisdiction over state law claims that do not, themselves, have a basis for federal subject matter jurisdiction once the Court has dismissed the claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). Here, Plaintiffs' federal claims all fail for the reasons stated above. The Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.

D. The Anti-SLAPP Motions.

"California law provides for the pre-trial dismissal of certain actions, known as Strategic Lawsuits Against Public Participation, or SLAPPs, that masquerade as ordinary lawsuits but are intended to deter ordinary people from exercising their political or legal rights or to punish them for doing so." Planet Aid, Inc. v. Reveal, 44 F.4th 918, 923 (9th Cir. 2022) (quoting Makaeff v. Trump Univ., LLC, 715 F.3d 254, 261 (9th Cir. 2013)); see Cal. Civ. Proc. Code § 425.16. The Ninth Circuit has held that California Code of Civil Procedure section 425.16 is, in part, a substantive law that applies in federal court to state law claims. See United States ex rel. Newsham v. Lockheed Missiles & Space Co., 190 F.3d 963, 972-73 (9th Cir. 1999).

To prevail on an anti-SLAPP motion, "the moving defendant must make a prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's constitutional right to free speech." Makaeff, 715 F.3d at 261. "Once it is determined that an act in furtherance of protected expression is being challenged, the plaintiff must show a 'reasonable probability' of prevailing in its claims for those claims to survive dismissal." Metabolife Int'l, Inc. v. Wornick, 264 F.3d 832, 840 (9th Cir. 2001) (citation omitted); see also Makaeff, 715 F.3d at 261. Under this standard, "the claim should be dismissed if the plaintiff presents

an insufficient legal basis for it, or if, on the basis of the facts shown by the plaintiff, 'no reasonable jury could find for the plaintiff.'" Makaeff, 715 F.3d at 261 (quoting Metabolife, 264 F.3d at 840).

Here, movants argue (primarily) that all of Plaintiffs' state law claims (1) arise from petitioning activity protected by the First Amendment and (2) are unlikely to succeed because the same limitations on judicial review that deprive the Court of jurisdiction over Plaintiffs' federal claims apply equally to Plaintiffs' state law claims. (Dkt. 68, 78.)

The Court has already dismissed the state law claims, exercising its discretion under 28 U.S.C. § 1367(c)(3) not to assert supplemental jurisdiction. Without any state law claims, district courts may properly decline to address anti-SLAPP motions. See Hilton v. Hallmark Cards, 599 F.3d 894, 901 (9th Cir. 2010) ("[A] federal court can only entertain anti-SLAPP special motions to strike in connection with state law claims …."); McMillan v. Chaker, 791 F. App'x 666, 667 (9th Cir. 2020) (holding that the district court, after dismissing all federal claims, did not abuse its discretion in not exercising supplemental jurisdiction over the remaining state law claims and not addressing the anti-SLAPP motion).

Movants urge the Court to retain jurisdiction to rule on the anti-SLAPP motions. The Court declines to do so. Applying California's anti-SLAPP law requires analysis under the two-part test described above, which goes beyond the analysis needed to dismiss the federal claims. Furthermore, Plaintiffs ask the Court to consider (1) a new Supreme Court decision that Plaintiffs believe limits or eliminates anti-SLAPP motions in federal court, and (2) the timing of the motions, both issues the Court need not reach if it declines to retain jurisdiction. (Dkt. 92 at 13-14, 23.) Finally, the Court has inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). Declining to address the anti-SLAPP motions serves the interest of judicial economy.

E. Leave to Amend.

If a district court finds that a complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). The court may dismiss a complaint without leave to amend if further amendment would be futile. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996). If, after careful consideration, it is clear that a complaint cannot be cured by amendment, then the district court may dismiss without leave to amend. See, e.g., Chaset v. Fleer/Skybox Int'l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that "there is no need to prolong the litigation by permitting further amendment" where the "basic flaw" in the pleading cannot be cured by amendment).

Plaintiffs request leave to amend. (Dkt. 93 at 87.) But in neither briefing nor oral argument have Plaintiffs identified any facts that they could add that would (1) qualify a particular IDE determination for vacatur or (2) put its other federal claims beyond the jurisdiction-stripping provisions of 42 U.S.C. § 300gg111(c)(5)(E)(i)(II). Since leave to amend would be futile, the Court declines to grant leave to amend.

V.

CONCLUSION

Based on the foregoing, **IT IS ORDERED** that (1) the motions to dismiss (Dkt. 69, 73, 76, 77) shall be granted for the reasons stated above; (2) all other pending motions (Dkt. 68, 72, 74, 78) shall be denied as moot; and (3) the FAC shall be dismissed in its entirety, without leave to amend.

DATED: April 9, 2026

Karen E. Scott

KAREN E. SCOTT
United States Magistrate Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

AETNA HEALTH INC. et al.,

Plaintiff,

v. Case No. 3:24-cv-1343-BJD-LLL

RADIOLOGY PARTNERS, INC., and MORI, BEAN AND BROOKS, INC.,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Defendants' Motion to Dismiss the Amended Complaint (Doc. 84), Plaintiffs' Response in Opposition (Doc. 90), and Defendants' Notice of Supplemental Authority (Doc. 91).

Plaintiffs are a tripartite conglomeration that make up the nationally known Aetna health insurance brand. (Doc. 80 ¶1; AC). Defendant Radiology Partners, Inc., ("RP"), is a "private equity-backed aggregator of radiology practices across" the United States. Id. ¶3. Once RP acquires a practice, it essentially controls and manages all aspects of the practice but conceals the extent of that control to "appear compliant" with state regulations, including potential prohibitions on the "corporate practice of medicine." Id.

One of the nine practices RP acquired in Florida was Defendant Mori, Bean and Brooks, Inc., ("MBB"), which had the most lucrative reimbursement contact with Aetna within the state. Id. ¶5. After RP acquired MBB, MBB's claim submissions skyrocketed. Id. ¶6. Aetna contends—and for purposes of this Motion, the Court accepts that contention—that RP funneled its other Florida radiology practices' claims through MBB to obtain higher reimbursements. Id. ¶6. Aetna inquired into the increase in the number of claims but MBB "deflected Aetna's inquiries." Id. Aetna responded by terminating MBB's in-network contract, which meant MBB would now be considered an "out-of-network" provider. Id. The other Florida RP radiology providers remained "in-network."[1]

The gravamen of the Amended Complaint is that once Aetna terminated its contract with MBB, RP continued submitting its other practices' claim through MBB forcing Aetna to reimburse MBB at an even higher rate out-of-network rate. Id. ¶8. The other RP entities billing through MBB did so despite not actually being fairly classified as a MBB provider. Id. This allowed RP to collect "significantly more for the same services provided by the same physicians at the same hospitals." Id. ¶9.

[1] The critical difference between an in-network provider and out-of-network provider is the former means there is a predetermined amount negotiated between the provider and insurance company that limits the cost passed on to the patient, while the latter leaves the uncovered amounts uncapped and owed by the patient.

The scheme relied on the recent enactment of the No Surprises Act ("NSA" or the "Act") 42. U.S.C. §§ 300gg-111, which, as its name implies, aims to reduce surprise billing by out-of-network providers to unwitting patients.[2] Id. ¶10; see also Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1079 (M.D. Fla. 2023), aff'd sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., 160 F.4th 1110 (11th Cir. 2025) ("Its main purpose was to end surprise medical billing by ensuring that certain out-of-network providers . . . are treated the same as in-network providers."). To that end, the Act requires the out-of-network provider to submit its bill to the patient's insurer, who must offer to settle the claim or refuse to pay the claim altogether. Med-Trans Corp., 700 F. Supp. 3d at 1079.

If the insurer and provider fail to agree, the dispute is forwarded to the Independent Dispute Resolution ("IDR") for "baseball style" arbitration. Id. After an arbitrator is assigned (or mutually agreed upon), the parties submit their best offers to the arbitrator, who must pick just one (no compromises or adjustments can be made) that the arbitrator believes best represents the equivalent in-network reimbursement rate. Id. The decision is "not . . . subject to judicial review except on the same grounds as are available to

[2] An example of this would be a patient receiving emergency services or undergoing a procedure at an in-network hospital who then contracted with an out-of-network anesthesiologist to assist with a patient's surgery.

review awards under the Federal Arbitration Act[,]" such as the existence of a fraudulent claim or evidence of misrepresentation of facts. Id at 1080 (citing § 300gg-111(c)(5)(E)(i)(II) (citing 9 U.S.C. § 10(a)(1)–(4))) (internal quotations omitted).

RP, using MBB, submitted tens of thousands of disputes under the NSA's IDR process that were premised on Defendants' misrepresentations that the services were provided by MBB, when they had been performed by other non-MBB providers. AC ¶11. Defendants knowingly and falsely certified the claims to both Aetna and the IDR administrators and obtained millions in awards from the IDR process. Id. ¶¶12-15. Aetna now seeks to have the IDR awards vacated and to recover damages from the fees associated with having to participate in the IDR process, and further to have disputed claims not yet filed with the IDR to be limited. Defendants responded with their Motion to Dismiss contending that there was no fraud; any fraud was not sufficiently pled, and further, the IDR awards are not reviewable.

Where a complaint alleges acts of fraud, it "must satisfy two pleading requirements [: Fed. R. Civ. P. 8(a)(2) and Rule 9(b)]." U.S. ex rel. Matheny v. Medco Health Solutions, Inc., 671 F.3d 1217, 1225 (11th Cir. 2012). In satisfying Rule 8(a)(2), a complaint needs to allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly,

550 U.S. 544, 570, 127 S.Ct. 1955 (2007). While "detailed factual allegations" are not required, mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" are not enough. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009). In assessing the factual allegations "[w]e . . . construe them in the light most favorable to the plaintiff." Pereda v. Brookdale Senior Living Communties, Inc., 666 F.3d 1269, 1272 (11th Cir. 2012) (citation and quotations omitted). Pleadings "must" be "a short and plain statement of the claim[s] showing that the pleader is entitled to relief[.]" Fed. R. Civ. P 8(a)(2).

Plaintiff must also meet Rule 9(b)'s heightened standard by "stat[ing] with particularity the circumstances constituting fraud." U.S. ex rel. Schubert v. All Children's Health Sys., Inc., No. 8:11-CV-1687-T-27EAJ, 2013 WL 1651811, at *1 (M.D. Fla. Apr. 16, 2013) (quoting Fed. R. Civ. P. 9(b)). "The particularity requirement of Rule 9(b) is satisfied if the complaint alleges "facts as to time, place, and substance of the defendant's alleged fraud, specifically the details of the defendant's allegedly fraudulent acts, when they occurred, and who engaged in them." Id. (citing Hopper v. Solvay Pharm., Inc., 588 F.3d 1318, 1324 (11th Cir. 2009) (quotations omitted)). However, "knowledge . . . may be alleged generally." Fed. R. Civ. P. 9(b). "The purpose of Rule 9(b) is to alert defendants to the precise misconduct with which they are charged and protect defendants against spurious charges."

Matheny, 671 F.3d at 1222 (citations and quotation omitted). Rule 9(b)'s heightened standard is tempered, however, in situations when the "alleged fraud occurred over an extended period of time and consisted of numerous acts." U.S. ex rel. Butler v. Magellan Health Servs., Inc., 74 F. Supp. 2d 1201, 1215 (M.D. Fla. 1999).

Starting with Rule 8's less demanding standard, the Court finds that the Complaint is anything but short but it does not necessarily violate Rule 8 for that reason alone. The Complaint sets forth the facts in numbered and organized paragraphs, most of which are pertinent to the claims, and clearly states the nature of Plaintiffs' claims. As to Rule 9, in Linville v. Ginn Real Est. Co., LLC 697 F. Supp. 2d 1302, 1309 (M.D. Fla. 2010), the court held that allegations failed to meet Rule 9(b)'s requirements where they failed to specify "which" agents made the statements, "when" the statements were made and "where" the statements were made.

Aetna does not make those same fatal mistakes. For example, Aetna listed a September 18, 2022 claim from Dr. Nouri billed under MBB's provider tax identification number despite Dr. Nouri working for Radiology Associates of South Florida on the opposite end of the state. AC ¶ 69. The location, date, and individual/entity are all specifically identified. Further, Aetna was harmed because it ultimately was ordered by the IDR arbitrator to

pay MBB an out-of-network amount of $752.00 instead of the in-network fee of $78.89. Id. ¶¶69-70.

Outside of stating a claim for fraud, the Court must determine whether the fraud is alleged in a manner to allow for review of the IDR awards. With limited exceptions as described by the Federal Arbitration Act, IDR decisions under the NSA are not reviewable. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc., 160 F.4th 1110, 1118 (11th Cir. 2025). A plaintiff bears a "heavy burden of demonstrating that vacatur is appropriate . . . by proving the existence of one or more of four statutorily enumerated causes for reversal set forth in 9 U.S.C. § 10(a)(1)-(4)." Wiand v. Schneiderman, 778 F.3d 917, 925 (11th Cir. 2015) (internal citation omitted). Fraud is one of those enumerated causes. Id.; Reach Air Med. Servs. LLC, 160 F.4th at 1121 ("FAA Section 10(a)(1) [ ] permits vacatur of an arbitration award when 'the award was procured by . . . fraud,' 9 U.S.C. § 10(a)(1)[.]").

To establish fraud, the plaintiff must:

> [(1)] establish the fraud by clear and convincing evidence"; (2) "the fraud must not have been discoverable upon the exercise of due diligence prior to or during the arbitration"; and (3) "the person seeking to vacate the award must demonstrate that the fraud materially related to an issue in the arbitration."

Reach Air Med. Servs. LLC, 160 F.4th at 1121 (quoting Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378, 1383 (11th Cir. 1988)).

As discussed above, Aetna has sufficiently alleged Defendants fraudulently submitted claims for reimbursement as out-of-network providers. Those claims resulted in IDR awards that injured Aetna by causing Aetna to incur arbitration fees and to pay at a rate higher than it would have if the claims were submitted as being performed by in-network providers.

Defendants strongest defense is that the fraud was discoverable upon the exercise of due diligence prior to or during arbitration. In the Amended Complaint, Aetna states that it terminated its contract with MBB because MBB was submitting in-network claims from providers across the state that were not employees of MBB. This occurred, necessarily, before MBB became an out-of-network provider through which non-MBB providers submitted claims. Though Aetna attempts to describe Defendants' efforts to shield the true origin of the claims, the Court is mindful of Aetna's "heavy burden" to upend administrative decisions on the basis of fraud. While a close call, the allegations presented in the Amended Complaint fail to establish a sufficient basis excusing Aetna from challenging the IDR disputes on the basis that they were wrongfully submitted by in-network providers. Aetna's own admission that it knew RP and MBB were engaged in that very act as the

reason for the termination of the in-network contract is fatal to Aetna's position. While Aetna cites the thousands of claim submissions and Defendants' efforts to conceal the nature of the fraud, it cannot excuse Aetna's failure to raise the issue in the IDR disputes.

As to the remaining claims, they are all premised on the same facts as Aetna's claims of fraud but rely on different legal theories for recovery. Aetna's attempt to end-around the NSA and FAA strictures is preempted. The NSA adopts the ferocity of the FAA in defending arbitration awards. Reach Air Med. Servs. LLC,160 F.4th at 1115 ("We review arbitration decisions very narrowly, and there is a strong legal presumption that arbitration awards will be confirmed[,]" and there is nothing in the "newly codified NSA, which has expressly incorporated some sections of the Federal Arbitration Act [ ], that has altered that limited scope of judicial review [or preference]."). The FAA preempts state law claims that would otherwise frustrate its purpose. See Marmet Health Care Ctr., Inc. v. Brown, 565 U.S. 530, 533 (2012). Allowing Aetna to recover for the IDR awards above what it otherwise would have paid would have the same effect as discarding the administrative process established by Congress. Because the NSA adopted those specific provisions of the FAA, Aetna's remaining claims must also fall—they are both preempted by the NSA and FAA and otherwise inadequate grounds to challenge the IDR awards. Regarding those claims yet

to be submitted to the IDR, the Court is not empowered to take a preliminarily review. Indeed, Aetna possesses more than enough knowledge pertaining to their propriety and can, if appropriate, challenge those claims before the IDR.

Accordingly, after due consideration, it is

ORDERED:

Defendants' Motion to Dismiss the Amended Complaint (Doc. 84) is **GRANTED**. Because amendment would be futile, the Amended Complaint is **DISMISSED with prejudice**. The Clerk of the Court shall close this file and terminate any pending motions.

DONE and **ORDERED** in Jacksonville, Florida this ***16th*** day of April, 2026.

BRIAN J. DAVIS
United States District Judge

Copies furnished to:

Counsel of Record