GLENN SOLOMON (*pro hac vice*)
CHRISTOPHER CHARLES JEW (*pro hac vice*)
WILLIAM MAVITY (*pro hac vice*)
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
Telephone: (213) 443-4355
Facsimile: (213) 443-4310
Email: gsolomon@kslaw.com
cjew@kslaw.com
wmavity@kslaw.com

SARA BRINKMANN (*pro hac vice*)
KING & SPALDING LLP
1100 Louisiana Street, Suite 4100
Houston, TX 77002-5213
Telephone: (713) 751-3200
Facsimile: (713) 751-3290
Email: sbrinkmann@kslaw.com

CONNOR R. BREWER (SBN 040378)
KING & SPALDING LLP
2601 Olive Street, Suite 2300
Dallas, TX 75201
Telephone: (214) 764-4420
Facsimile: (214) 764-4601
Email: cbrewer@kslaw.com

Attorneys for Defendants
Radiology Partners, Inc.; Sonoran Radiology, Ltd

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

PHOENIX DIVISION

United Healthcare Services, Inc.; UnitedHealthcare Insurance Company; and UMR, Inc.,

Plaintiffs,

v.

Radiology Partners, Inc.; and Sonoran Radiology, Ltd.,
Defendants.

Case No. 2:25-cv-02862-PHX-GMS

DEFENDANTS RADIOLOGY PARTNERS, INC. AND SONORAN RADIOLOGY, LTD.'S MOTION TO TRANSFER, STAY, OR DISMISS UNDER THE FIRST-TO-FILE RULE, OR, ALTERNATIVELY, DISMISS PURSUANT TO F.R.C.P. 12(b)(6)

[Filed Concurrently with Certification of Conferral and Request for Judicial Notice]

NOW INTO THE COURT, through undersigned counsel, comes Defendants Radiology Partners, Inc. ("RP") and Sonoran Radiology, Ltd. ("Sonoran") (collectively, "Defendants"), which respectfully file this Motion to Transfer, Stay, or Dismiss Under the First-to-File Rule, or Alternatively, to Dismiss for Failure to State a Claim Under FRCP 12(b)(6), and moves this Honorable Court transfer, stay, or dismiss Plaintiffs' Complaint against Defendants with prejudice, or, alternatively, to dismiss United's Complaint.

This Motion is made pursuant to the first-to-file rule and FRCP 12(b)(6) for the reasons set forth in this motion, and the concurrently filed memorandum of points and authorities, which are incorporated herein. In brief, the Court should transfer, stay, or dismiss Plaintiffs' Complaint pursuant to the first-to-file rule because this lawsuit overlaps with a complaint that one of the Plaintiffs filed against one of the Defendants more than two years ago in the Central District of California. The reason that Plaintiffs filed this lawsuit rather than amend their pleadings in the Central District of California appears to be that the California lawsuit is stayed pending resolution of related arbitrations.

In the alternative, if the Court reaches the merits of Plaintiffs' Complaint, Defendants move to dismiss the Complaint with prejudice for failure to state a claim because United's factual allegations fail to plausibly allege fraud. Radiologists are permitted to switch radiology group entities or be affiliated with multiple radiology group entities. Further, United has not pled any facts making plausible, rather than merely possible, that Sonoran is not the radiology group providing services at the locations affiliated with the services Sonoran bills. The fact that radiologists and locations switched from other radiology group entities to Sonoran is just as consistent with hospitals choosing Sonoran as the contracted radiology group entity as anything that United alleges. Thus, United's Complaint fails to state a claim and should be dismissed with prejudice.

This Motion is based on the accompanying Memorandum of Points and Authorities, the Exhibits hereto, the accompanying Request for Judicial Notice, the accompanying Certification of Conferral, all the pleadings and other documents on file in this action; and any further argument or evidence that may be received by the Court.

WHEREFORE, Defendants respectfully prays that, after due proceedings are had, this Court transfers, stays, or dismisses Plaintiffs' claims pursuant to the "first-to-file" rule or in the alternative, dismiss Plaintiffs' claims with prejudice under Rule 12(b)(6) and provide all other general and equitable relief.

Dated: November 3, 2025

Respectfully submitted,

KING & SPALDING LLP

By: */s/Glenn Solomom*

Glenn Solomon
Sara Brinkmann
Christopher Charles Jew
Connor R. Brewer
William Mavity

Attorneys for Defendants
Radiology Partners, Inc.
Sonoran Radiology, Ltd.

TABLE OFCONTENTS

I. INTRODUCTION

Sonoran Radiology, Ltd. ("Sonoran") is a Radiology Partners, Inc. ("RP") affiliated radiology group entity that has provided professional radiology services to patients at Arizona facilities, including Banner Health and HonorHealth systems, which contracted with Sonoran to staff their radiology departments since about 2020. Since commencing operations in 2019, Sonoran has obtained contracts with certain major healthcare insurers at times, such as Blue Cross and Blue Shield of Arizona,[1] but has not accepted any below market offer from United. Resultingly, Plaintiffs (collectively, "United") have concocted this lawsuit and its inflammatory allegations as part of United's national business strategy to use lawfare against RP to advance United's anticompetitive goals.

First, United hopes to pressure Sonoran to accept the low ball offers for an in-network agreement that Sonoran has previously refused.

Second, United seeks to get out of paying awards adjudged under the federal No Surprises Act[2] ("NSA") Independent Dispute Resolution ("IDR") process, because the independent IDR entities ("IDREs") have repeatedly determined that the fair reimbursement owed to Sonoran was significantly higher than the low-ball initial Qualifying Payment Amount ("QPA") United initially allowed and paid. Indeed, United spends much of its Complaint grumbling about its repeated losses to Sonoran in the IDR process. But this reflects that objective independent reviewers overseen by CMS have found United substantially underpaying Sonoran for radiology services.

Third, United wants to blame Sonoran for the higher costs that United has thrust upon its self-funded employer customers by United's refusal to reach an in-network agreement with Sonoran at sustainable rates, and therefore avoid the unnecessary administrative costs of the NSA. United harms its employer customers by both charging them administrative fees for the avoidable NSA expenses and passing to them the expenses of its NSA losses against Sonoran.

---

[1] https://www.radpartners.com/2023/05/sonoran-radiology-and-blue-cross-and-blue-shield-of-arizona-reach-new-contract-agreement/.

[2] 42 U.S.C. §§ 300gg-111-12, et seq.

Fourth, United's affiliate Optum has been expanding its own radiology business through the acquisitions of medical groups with radiologists. The United conglomerate is now reported to employ and contract with more doctors than any other company in the nation, making it both an existing and growing competitor of RP. These bogus lawsuits by United's health plan side benefit United's competing provider side.

This is not the first time United has pursued these inflammatory theories as part of its lawfare against RP and its medical groups. The same fraud theories were rejected in a counterclaim in a Texas arbitration between United and a different RP-affiliated medical group (the "Texas Arbitration"). In fact, United is still pursuing these same theories currently in a lawsuit against RP in the Central District of California (the "CA Lawsuit") that alleged a national scheme and is stayed pending the resolution of related arbitrations in Florida, North Carolina, and Colorado. All of those cases, like this one, involve the same theory by United that RP-affiliated groups billed for providers from other RP affiliated medical groups. Of course, that theory ignores that the facilities pick the staffing radiology group, not United.

The CA Lawsuit is still pending, and if United wanted to try to re-engage the federal court system, then United should have asked the California Court for permission to do so. Instead, United improperly filed this copycat lawsuit, in a blatant attempt at forum shopping. This Court should either transfer this duplicative lawsuit to the Central District of California based on the first to file doctrine, and/or dismiss and/or stay it. While United has dressed up this new filing by arguing that it involves the NSA, the same underlying argument about which medical group has the right to bill permeates here as everywhere. United assumes that radiologists must remain affiliated with and continue to provide services on behalf of radiology group entities of United's choice, rather than on behalf of the radiology group entity contracted to staff a facility. In short, United believes that it, not the hospitals, radiology groups, or doctors, gets to control who renders services at the facilities, and for whom the doctors work.

Alternatively, the Court should dismiss United's Complaint entirely. United's complaint is premised on implausible foundations. As United recognized in its pleadings in the California lawsuit, the facility determines which group staffs its radiology department, and

the chosen radiology group has the right to bill for the services rendered on its behalf for both its employees and contractors. United's Complaint here does not allege that Sonoran lacks the staffing contract for the facilities where it bills, nor that United undertook any inquiry to ask the facilities before launching this latest legal salvo. Rather, United assumes that doctors cannot switch medical groups or simultaneously be affiliated with multiple medical groups.[3] Judicially noticeable government data, from the Medicare Revalidation List published by the Centers for Medicare & Medicaid Services ("CMS"), reflects that Sonoran's radiologists, including those radiologists who United claims are not affiliated with Sonoran, have very often reassigned their right to bill CMS to other entities in addition to Sonoran. In other words, CMS data reflects that doctors affiliate with and provide services on behalf of multiple entities, who can each bill for those services.

The fact that radiologists switched to provide services on behalf of Sonoran rather than another legal entity does not mean Sonoran billed for services provided by the other entity, nor make Sonoran a "sham" entity, as United pejoratively contends. United's own Optum affiliates buy and consolidate medical groups under the Optum brand all the time.

Furthermore, United cannot meet the extremely high standard required to vacate NSA IDR awards for "fraud," as United could have – but did not – raise eligibility challenges to the NSA IDREs. Resultingly, this Court can dismiss United's Complaint if the lawsuit is not transferred, stayed, or dismissed pursuant to the first-to-file rule.

II. BACKGROUND

A. The Parties

Defendant RP, along with its owned and/or managed radiology practices, is a leading physician-owned and physician-led national radiology practice for radiologists, radiology

[3] In modern radiology practice diagnostic radiologists often read scans remotely and are more likely than all other types of physicians to affiliate with and provide services on behalf of multiple radiology groups, as only the radiology group entity staffing a facility can provide services there. *See* https://radiologybusiness.com/topics/healthcare-management/medical-practice-management/radiologists-increasingly-affiliating-multiple-practices-trend-most-pronounced-among-young-rads.

practices, hospitals, health systems, patients, and families.[4] Currently, RP and its affiliated practices "employ[] more than 4,000 radiologists at 3,400 sites in all 50 states." Compl. ¶ 51. Radiologists lead RP's affiliated practices, consistent with RP's philosophy to operate as one practice, locally led, where local radiology practices both realize the benefit of RP's scale and maintain clinical autonomy. RP's board of directors includes practicing radiologists and other doctors.[5] RP provides services to its affiliated radiology practices including billing, financial, and management support. *Id.* ¶63.

Defendant Sonoran is an RP affiliated radiology group entity formed in 2019 that obtained its National Provider Identifier ("NPI") in 2020. *Id.* ¶¶67-68. Sonoran "provides radiology services in Arizona," through a "diverse and cohesive team of radiologists consist[ing] of fellowship-trained, board certified radiologists from the country's top academic training programs."[6] The court can take judicial notice that Sonoran filed for the following trade names, which, under Arizona law are similar to a "doing business as" name and not legally required, in 2019: (1) Radiology Partners SMIL, (2) RP SMIL, (3) Radiology Partners Valley, (4) RP Sol, (5) Radiology Partners Saguaro, (6) RP Saguaro, and (7) RP Sol. The court can also take judicial notice that the Medicare Revalidation List on the CMS website reflects that 1,094 providers have assigned to Sonoran those physician's right to receive benefits for services rendered to patients covered by Medicare.[7] This means that these physicians have submitted paperwork / applications to the government representing that they are employed by or contracted with Sonoran, such that Sonoran may receive payment for those physician's services. Notably, the number of providers who have reassigned benefits to Sonoran – 1,094 - is not the same as the number of providers who have reassigned benefits to Southwest Diagnostic Imaging, LLC – 231, nor Associated Valley Radiology, Ltd. – 303.

Plaintiffs United are, collectively with their affiliated entities, including without limit

[4] *Radiology Partners* available at https://www.radpartners.com/about-us/our-practices/.
[5] https://www.radpartners.com/about-us/our-team/
[6] https://sonoranradiology.radpartners.com/
[7] https://data.cms.gov/tools/medicare-revalidation-list.

Optum, the largest health insurance and benefits company in the United States. United's corporate parent, United Health Group ("UHG") is one of the largest companies in the world. UHG is Number 3 on the 2025 Fortune 500 list. United's annual profits have increased over the last decade from $5.6 billion to $20.1 billion. Through its United and Optum subsidiaries, UHG operates as both a payor for and a provider of healthcare services, including radiology. United/Optum affiliates now are the nation's largest employer and contractor of physicians on the provider side, with more than 70,000 physicians, including radiologists.[8] Thus, United has become an actual and growing competitor of RP and its affiliated medical groups. United's huge size on both sides of the payor-provider span helps it to exert outsized leverage in negotiations, and sometimes leads it to launch untenable lawsuits, like this one, to try to pressure doctors, medical groups, and their agents, into submission.

B. Prior Disputes Between the Parties and Their Affiliates

United falsely contends that it "only recently uncovered the scheme and, in all respects, has acted with reasonable diligence to now promptly seek vacatur of the IDR awards at issue." Compl. ¶ 258. But judicial notice confirms otherwise.

C. United Filed A Federal Lawsuit With The Same Claims As Here

On April 14, 2023, one of the United plaintiffs here, United HealthCare Services, Inc., filed the same core theories against RP in the "CA Lawsuit". That first federal court lawsuit paralleled counterclaims that United's subsidiary United HealthCare of Texas, Inc. ("UHCTX") had filed in an arbitration initiated by Singleton Associates, P.A. ("Singleton"), a RP-affiliated medical group in Texas, because United started paying Singleton at 75% below the parties' contract, based on an alleged replacement contract that United unlawfully procured through United's DocuSign spamming scheme the health plan launched during the 2020 pandemic. A few months later, to try to circumvent RP's motion to compel arbitration, United filed a First Amended Complaint, on August 2, 2025 (the "CA FAC") that added allegations

[8]https://radiologybusiness.com/topics/healthcare-management/mergers-and-acquisitions/radiologists-unitedhealth-physician-practice-crystal-run (describing United's purchase of a huge medical group in New York, including its radiologists).

of purported examples of the core alleged national scheme by adding references to RP affiliated groups in Florida and North Carolina.

In both the CA lawsuit and here, United's core theory was and remains that, allegedly, "Radiology Partners, caused its affiliated medical groups to bill for services that they did not perform." Compare RJN Ex. 1 CA Compl. ¶3 ; RJN Ex. 2 CA FAC *Id.* ¶3 with Complaint ¶71. Moreover, United also expressly alleged in California that the scope of the California Lawsuit was around the country, not limited to just the examples that United referenced in Texas, Florida, and North Carolina. *See, e.g.,* CA FAC, paragraph 88 ("On information and belief Radiology Partners engaged in its fraudulent billing scheme in several states **across the country**. The following are just a few examples of Radiology Partners' scheme."); *see also* ¶ 56 ("The examples provided below [regarding Texas, Florida, and North Carolina RP affiliated groups] are merely examples, and are not intended to limit the scope of this case.").

D. RP Compelled United To Arbitrate and the CA Lawsuit Remains Stayed and Subject to the California Court's First In Time Jurisdiction

Following United's filing of the FAC, the California court compelled United to arbitrate its parallel claims against RP, pursuant to the arbitration provisions in contracts between the RP affiliated medical groups and United. RJN, Ex. 3. The California Court also stayed the CA Lawsuit, which stay avoided the risk of inconsistent results on the underlying core alleged wrongdoing. *Id.* (granting stay). And the California Court ordered the parties to provide periodic updates. *Id.*.

On August 7, 2024, the Arbitration Panel in the Singleton arbitration issued a Final Award, which Singleton later confirmed as a final judgment. *See* RJN, Exs. 4, 5 (Application to Confirm Final Award; Agreed Final Judgment). The Final Award determined that neither party would recover from the other, including that "United [UHCTX] is not entitled to any recovery against Singleton." Ex. 4 at p. 6.

The California Lawsuit remains stayed pending resolution of arbitrations pending between United and its affiliates and RP and its affiliates; and the parties continue to file status reports to the court in the California Lawsuit. Indeed, a recent update to the California Court

identified this new Arizona lawsuit, showing that United agrees there is an overlap between that earlier filed lawsuit and this one. See RJN, Ex. 6.

E. United Admits That The Radiology Group Holding The Staffing Contract Is the Provider Who Rendered and Can Bill For The Services

Radiology is a critical hospital specialty. CMS mandates that all hospitals must maintain or have access to radiological services 24/7, as a condition of participation in the Federal healthcare programs. See 42 C.F.R. § 482.26. The hospital provides the equipment to take the image (e.g., the PET, CT, or MRI machine), while the radiologists are needed to read and interpret those images. United admitted in its CA Lawsuit that radiology groups "staff[] the facility's radiology department using the radiologists who are employed by or otherwise contracted with the medical group." *See* RJN, Exhibit 2, ¶¶ 39-41. This shows United recognizes medical groups can get doctor services by contracting for them rather than employing them. United has not alleged there or here that Sonoran lacks contracts for services from the doctors who provide services on behalf of Sonoran.

Likewise, when facilities contract with radiology groups, the industry norm, which United has recognized in its pleadings in another lawsuit against RP, is for facilities to contract with "a single medical group to perform radiology services for that facility." *Id.* ¶ 41. United also admits that "A medical group can only perform services at a given facility if it is contracted by that facility to provide services." *Id.* Resultingly, United confirmed: "When a medical group is contracted with a facility to provide radiology services, the medical group whose physicians performed the services bills insurance companies using the medical group's name and TIN[,]" because "[w]hen a medical group's physician performs the service, the medical group is the provider who rendered the service and can, thus, bill for that service." *Id.* As courts have recognized, only the group holding the contract to staff a radiology department can provide and bill for radiology physician services at a facility.[9]

[9] *See, e.g., Morgan, Strand, Wheeler & Biggs v. Radiology, Ltd.*, 924 F.2d 1484, 1487 (9th Cir. 1991) (affirming summary judgment in favor of Arizona hospital and radiologist group defendants in antitrust action brought by competitor radiology group, noting that "hospitals

As applied here, the law and United's admissions mean that only Sonoran can render and bill the radiology services provided at the contracting facility if Sonoran holds the staffing contract for that facility. But United's lawsuit fails to allege that any other group hold the staffing contracts, or even that it's asked any of the hospitals.

F. Since Jan. 1, 2022, the NSA Governs Sonoran's Reimbursement from United

Before the NSA became effective as of January 1, 2022, out-of-network radiology providers such as Sonoran receive payments from United "calculated according to the terms of each patient's specific health plan." Complaint. ¶¶23-27. Thus, historically, an insurer like United could pay nothing to an out-of-network provider like Sonoran. If the insurer paid less than the amount billed, a medical group could bill the patient for balance, a practice known as "balance billing." United's business used this extra financial exposure faced by its members to drive them to go in-network.

However, this changed once the federal NSA became effective as of January 1, 2022, after which United could no longer leverage its members. So, United decided to just make low ball payments to providers, forcing them to either take whatever United unilaterally decided to pay, or pursue relief from the CMS overseen IDREs under the NSA.

1. The NSA Protects Patients Who Receive Out-Of-Network Care from Medical Groups at In-Network Facilities

When a hospital chooses a medical group to staff a specialty department and gives that group the right to bill, the medical group bills for the services provided by the doctor (the professional component) and the hospital bills for the use of the facility involved in the service (the technical component). *See, e.g., Daniel F. Shay, Physicians and Medicare Diagnostic Testing: Untangling the Gordian Knots,* 11 J. Health & Life Sci. L. 1, 4 (2018) (diagnostic tests are broken into a "technical component" and a "professional component"). This two-

---

generally have contracts with radiologists to insure prompt and reliable image interpretations when physicians order medical images. The contract might provide only that a radiologist be available, **but might also provide a specific radiologist or group of radiologists an exclusive obligation and right to interpret all medical images obtained in the hospital**.") (emphasis added).

tracked billing system, and the fact that insurers may choose to contract with a hospital but not the staffing medical group, means that patients can receive services from out-of-network hospital-based specialists even when the hospital is in-network.

Congress enacted the NSA, in part, to protect patients from these types of "surprise medical bills." Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758-2890 (2020). Under the NSA, United makes initial payments to out-of-network providers based on its median in-network rate, known as the Qualifying Payment Amount ("QPA"), followed by an IDR process for any payment disputes. 42 U.S.C. § 300gg-111(a)(1)(C)(iv), (b)(1)(C). Unresolved disputes are settled by a "baseball-style" arbitration under the supervision of CMS, the agency that oversees and vets IDREs. See generally 42 U.S.C. § 300gg-111. The NSA employs this process because reimbursement for out-of-network services, where payment can be uncertain and long delayed, typically is higher than the discounted rates that contracted providers extend in exchange for the benefits of being in-network and receiving timey payment. Congress just took the patients out of the middle.

2. United Does Not Allege it Challenged Whether any of Sonoran's Bills were Eligible for IDR During the IDR Process, as Required by the NSA

The NSA IDR process includes deadlines for United to raise to the NSA IDR any contention that services Sonoran submits to the NSA IDR are not eligible for the NSA, including because the services are contracted in-network services with another medical group, as United now contends here.[10] United offers no contention or exhibit to its Complaint to establish it ever once made such an eligibility challenge in any of the "tens of" IDRE proceedings. (Compl. ¶¶ 7, 183.)

CMS has promulgated guidance regarding the NSA timelines, which provide for a 30-day period from the receipt of the claim for the health plan to make an initial payment[11] or

[10] *See Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf, (accessed Oct. 23, 2025) at p. 17, §5.5.

[11] This 30-day period gives Aetna a chance to ask for information on "whether the services are subject to the protections of the [NSA]. *See* Guidance for Disputing

issue a notice of denial of payment.[12] If a provider is dissatisfied with the health plan's initial determination, it may send an "Open Negotiation Notice" to kick off a mandatory 30-day negotiation period regarding the payment amount. During this time, a provider must provide the TIN and provider name, and the parties may continue to communicate regarding the disputed claim.[13] Thus, for all the NSA IDR disputes with Sonoran, United knew full well the relevant individual providers and could have raised with the certified IDR entity whether those individual radiologist's claims were NSA eligible. Only after the 30-day negotiation period may either party initiate the IDR process.

The IDR process after open negotiation also requires that "[i]f the non-initiating party believes that the Federal IDR Process is not applicable, the non-initiating party must notify the Departments … as part of the certified IDR entity selection process. This information must be provided not later than **1 business day** after the end of the 3-business-day period for certified IDR entity selection…."[14] The IDRE is required to determine that the dispute is eligible for the IDR process, and if eligibility is challenged, the IDRE can ask for documents and/or an explanation justifying the parties' respective positions.[15] Yet, United does not allege that it

---

Parties, https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf, (accessed 10/23/25) p. 10; *see also* FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 62 (10/6/23), *available at* https://www.cms.gov/files/document/faqs-part-62.pdf (accessed 10/23/25).

[12] *See* Guidance for Disputing Parties, https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf (accessed 10/23/25), p. 17, § 5.5.

[13] *See* https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/open-negotiation-notice.pdf (accessed 10/23/25). The NSA rulemaking recognizes the TIN as identifying the rendering provider. *See* 86 Fed. Reg. 55994 ("Items and services are billed by the same provider or group of providers or facility or same provider of air ambulance services if the items or services are billed with the same National Provider Identifier (NPI) or [TIN]."); *see also* 86 Fed. Reg. 56064 ("By allowing groupings of providers with the same TIN, this will allow group practices to batch together qualified IDR items or services.").

[14] *See* Guidance for Disputing Parties, https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf, (accessed 10/23/2025) p. 17, § 5.5.

[15] *See* 45 C.F.R. § 149.510(c)(1)(v) ("[T]he certified IDR entity selected must review the information submitted in the notice of IDR initiation to determine whether the Federal IDR process applies. If the Federal IDR process does not apply, the certified IDR entity must

raised any such challenges with the IDREs. Furthermore, "CMS maintains an online portal through which providers may submit complaints regarding the IDR process." *Guardian Flight, L.L.C., et al. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025). United does not allege that it availed itself of that either.

3. United's Allegations Rely On Information Always Available To United, Not Newly Discovered Information

The allegations and judicial notice show that all the facts United pleads in support of its fraud allegations were available to United at the time it paid Sonoran's bills and engaged in the IDR process. United admits that the bills it received from Sonoran included industry standard, required information, including Sonoran's TIN as the provider group billing the claim, the individual radiologist's NPI who rendered the service, and location information indicating which hospital or facility the services were provided. (Compl. ¶¶ 73, 76, 89-91; RJN, Ex. 11 [NUCC Manual]. United relies on publications such as provider group websites and social media sites like LinkedIn to argue that Sonoran radiologists are also affiliated with RP or another provider group. (Compl., ¶¶ 91-95, 105-107, 125-127, 135-136). Additionally, United relies upon the bills submitted to United, which reflected that radiologists sometimes were providing services on behalf of Sonoran and other times on behalf of other radiology groups entities. (Compl. ¶ 76). But none of these allegations are contrary to the admissions that medical groups can and do use contractors as well as employees to staff hospitals.

III. THIS COURT SHOULD TRANSFER, OR ALTERNATIVELY, DISMISS AND/OR STAY THIS CASE PURSUANT TO THE FIRST-TO-FILE RULE

A. The First-to-File Rule Factors Supports Transfer, Stay, or Dismissal

United's complaint is duplicative of the earlier CA Lawsuit United filed against RP and should be transferred, or in the alternative dismissed or stayed, pending the resolution of the

---

notify the Secretary and the parties within 3 business days of making that determination."). The IDRE can ask for documents and explanation from the parties for eligibility challenges. *See* Technical Advice for Certified IDR Entities, August 2022, https://www.cms.gov/files/document/TA-certified-independent-dispute-resolution-entities-August-2022.pdf (accessed 10/23/25) at 10-11.

earlier lawsuit. The first-to-file rule is a "generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district." *Winters v. Quicken Loans Inc.*, 2021 WL 948767, at *2 (D. Ariz. Mar. 12, 2021) (quoting *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982)).

"When deciding whether to apply the first to file rule, district courts look to three factors: (1) chronology of the lawsuits; (2) similarity of the parties; and (3) similarity of the issues." *Paparella v. Plume Design Inc.*, 2023 WL 2463778, at *2–3 (D. Ariz. Mar. 10, 2023). The rule "serve[s] the purpose of promoting efficiency" and "should not be disregarded lightly." *Winters*, 2021 WL 948767, at *2 (quoting *Kohn L. Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1239 (9th Cir. 2015)). When the first-to-file rule applies, it allows the court to "transfer, stay, or dismiss the action." *Slick Slide LLC v. Jokawiem Mfg. LLC*, 2025 WL 904489, at *1 (D. Ariz. Mar. 25, 2025). All three factors support transfer under the facts alleged here.

B. Chronology of the Lawsuits Supports Applying the First-to-File Rule

As described above, United filed the CA Lawsuit in 2023, more than two years before filing this lawsuit, with several arbitrations filed in between. Following RP's Motion to Compel Arbitration, the court in the CA Lawsuit stayed the action pending the resolution of arbitration. *See United HealthCare Servs., Inc. v. Radiology Partners, Inc.*, 2023 WL 6908674 (C.D. Cal. Sept. 27, 2023). Instead of adding its parallel allegations to the already pending TX Arbitration, where United had first launched these charges, United filed nothing against RP for more than a year. Then, several months after the TX Arbitration concluded in 2024, United initiated parallel arbitrations in Florida and North Carolina. The next year, 2025, United filed a parallel arbitration in Colorado. Now, with the CA Lawsuit and all these arbitrations still pending, United has filed this Arizona lawsuit, based on the same core alleged torts – i.e., challenging that the RP affiliated group rendered the services.

Only on August 8, 2025, more than two years after filing the original CA Lawsuit, did United file this parallel Arizona lawsuit against RP, alleging the same core wrongdoing as to

Sonoran, rather than United seeking leave to amend the already pending CA Lawsuit. ECF No. 1. Thus, the chronology of the two lawsuits—the first factor— strongly weighs in favor of applying the first-to-file rule.

C. Similarity of the Parties Supports Applying the First-to-File Rule

The first-to-file rule considers "substantial similarity of parties" but does not need exact overlap between parties. *Kohn L. Grp., Inc.*, 787 F.3d at 1240–41; *see Slick Slide LLC*, 2025 WL 904489, at *2 ("As to the second factor—similarity of the parties—exact identity of the parties is not required."). Indeed, "courts have routinely" applied the first-to-file rule when, comparing the two actions, there are additional defendants or plaintiffs. *Slick Slide LLC*, 2025 WL 904489, at *2.

For instance, in *Sprout Financial, LLC*, 2020 WL 1482627 (D. Ariz. Mar. 26, 2020) the District Court compared an initial action, which had two parties, with a subsequent action, which had five parties, and looked at the underlying relationships between the newly added parties. 2020 WL 1482627, at *2–3. Those newly added parties, the court observed, were either "wholly owned" or otherwise had an ownership-related interest with the two parties from the initial action. *Id.* The court therefore found that the second factor of substantial similarity was met, reasoning that concluding otherwise "would essentially negate the policy underlying the first-to-file rule and allow gamesmanship" and allow parties "to circumvent the rule by adding other entities to the second action." *Id.* In fact, United-related entities have made, and prevailed, on this exact point when United has sought to use the first-to-file rule to transfer other lawsuits when it is the defendant. *E.g.*, *Gonzalez v. UnitedHealth Grp., Inc.*, 2020 WL 2992174, at *3 (W.D. Tex. June 3, 2020)("As previously stated, all the defendants among the three suits are affiliates or subsidiaries of UnitedHealth Group. The Court determines that there are sufficient similarities between the parties that the invocation of the first-to-file rule is appropriate.").

Here, as in the CA Lawsuit, United Healthcare Services, Inc. is a plaintiff and RP is a defendant. The other parties that United has added to this matter are subsidiaries and/or affiliates of each of them. UnitedHealthcare Insurance Co. and UMR, Inc. are both

subsidiaries of United, and all three are subsidiaries of non-party UnitedHealth Group Inc. *See* ECF No. 2. Sonoran is a subsidiary of RP. *See* ECF No. 19. Thus, the parties in the California Lawsuit and the parties here have "substantial similarity." *Kohn L. Grp., Inc.*, 787 F.3d at 1240–41. And if that were not enough, other *indicia* further underscore these similarities. United, for instance, has "employed the same counsel in both cases," Which courts use in the first-to-file analysis. *See Slick Slide LLC*, 2025 WL 904489, at *2.

D. Similarity of the Issues Supports Applying the First-to-File Rule

Courts, when evaluating the third factor, look at the similarities between the lawsuits—the factual circumstances and underlying claims—to determine if they contain "substantially similar" issues. *Kohn L. Grp., Inc.*, 787 F.3d at 1240. There is no requirement for the issues be "identical." *Id.* All that need exist is a substantial overlap between issues in the two cases.

Specifically: "When analyzing if two lawsuits have substantially similar issues, the Court must determine whether there is 'substantial overlap' between the issues." *Paparella*, 2023 WL 2463778, at *2–3; *Slick Slide LLC*, 2025 WL 904489, at *2 ("[T]he Court finds that while there are some distinctions in the legal questions in the cases, there is substantial overlap between the factual issues in the cases such that transfer would be [appropriate].").

Nor can a plaintiff avoid transfer by adding other claims. *See Sprout Financial, LLC*, 2020 WL 1482627, at *3 (there is substantial similarity between the issues raised in both actions because, even though the second action "brought several other claims," but many of the alleged facts "directly relate[]" to the same key issues").

United's core theories in the CA Lawsuit and the present action are the same. *See supra,* section II.C.. Both alleged that RP and its affiliated medical groups engaged, in United's own same words, a "classic form of healthcare fraud" called "pass-through billing" by causing "its affiliated medical groups to bill for services that they did not perform." RJN, Ex. 2 (California Lawsuit), ¶ 3; Comp., ¶ 6. Moreover, both actions describe the same alleged scheme to bill for and receive reimbursements for services rendered at places where United allegedly did not contract with the groups for those locations, and supposedly United's contracts with other groups applied to those locations. RJN, Ex. 2, ¶¶ 9-10, 131–41; Compl. ¶¶ 6, 84-111. And,

in both lawsuits, United fails to address which group holds the hospital staffing contract, making this a common flaw in its core theories.

Ultimately, United seeks to recover alleged overpayments caused by this same core alleged fact pattern, asserting the same causes of action in both the California Lawsuit and here: fraud; negligent misrepresentation and omission; money had and received; unjust enrichment; and RICO violations. RJN, Ex. 2, ¶¶ 130–211, Compl. ¶¶ 193–312. United adding arguments about the NSA do not change the underlying alleged theory that the services purported were not rendered by the RP affiliated medical groups. Thus, the third factor supports transfer too.

E. Judicial Economy Supports Applying the First to File Rule

Moreover, transferring, or in the alternative, dismissing or staying this matter would "maximize judicial economy, consistency, and comity." *Kohn L. Grp., Inc.*, 787 F.3d at 1240. Allowing one court to resolve the issues related to the alleged disclosure will avoid "inconsistent judgments." *C21FC LLC v. NYC Vision Cap. Inc.*, 2022 WL 2646168, at *4 (D. Ariz. July 8, 2022); *RSC Equip. Rental Corp. v. Foster*, 2009 WL 10673090, at *3 (D. Ariz. Aug. 3, 2009) ("There is a possibility of inconsistent judgments in the two cases, and the determination of the same issue in two different courts would unnecessarily burden the federal judiciary."). These important considerations further tilt the balance in favor of concluding that the third factor is satisfied. *Pacesetter*, 678 F.2d at 95 (a court's discretion in applying the first-to-file rule should be guided by "determinations concerning wise judicial administration, giving regard to conversation of judicial resources and comprehensive disposition of litigation" (internal quotation markets omitted)).

The apparent reason that United filed a new lawsuit here rather than seek to amend the CA Lawsuit is because that federal court correctly stayed that action. The Central District of California is more than capable of handling the substantially similar claims and issues presented here, including determining whether they overlap with the currently stayed CA Lawsuit, which United itself alleged there was not limited in scope to the RP-affiliated medical groups located in the states specifically referenced, i.e., Texas, Florida, and North Carolina.

RJN, Exhibit 2, ¶¶ 57–75.

Because the first-to-file rule should apply, the Court need not, and should not, proceed to the merits of this later filed lawsuit. Here, transfer to the Central District of California will best accomplish the first-to-file rule's purpose to "promot[e] efficiency." *Kohn L. Grp., Inc.*, 787 F.3d at 1239; *Paparella*, 2023 WL 2463778, at *3 ("Since the Court finds that dismissal without prejudice under the first to file rule is appropriate in this case, the Court does not reach the merits of Defendant's other arguments.").

IV. ALTERNATIVELY, UNITED'S COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

If this Court were to evaluate the pleadings rather than transferring this case, then United's complaint here must be dismissed, for both (a) failure to state a claim in general, and (b) failure to state a claim with the particularity required for the fraud-based theories.

A. United's Fraud-Based Complaint Must be Plausible and Plead with Particularity to Survive a Motion to Dismiss for Failure to State a Claim

Rule 8(a) requires a complaint to contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" to survive a motion to dismiss. To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plausible means something more than "possible" or "conceivable," and requires pleading "factual content that allows the court to draw the reasonable inference that the defendant is liable" for the alleged misconduct. *Id.*; *Gonzalez v. Planned Parenthood of Los Angeles*, 759 F.3d 1112, 1115 (9th Cir. 2014) ("possible" but not "plausible" knowing submission of false claims not sufficient to survive motion to dismiss, given "obvious alternative explanation" of the submission of incorrect claims). Though factual allegations in a complaint are normally treated as true, the Court "need not … accept as true allegations that contradict matters properly subject to judicial notice or by exhibit." *Gonzalez*, 759 F.3d at 1115.

Additionally, Rule 9(b) further requires fraud-based claims be plead with particularity, i.e., "accompanied by the who, what, when, where, and how of the misconduct

charged." *Kearns v. Ford Motor Co*., 567 F.3d 1120, 1124 (9th Cir. 2009) (internal quotations and citations omitted). "In order for a complaint to allege fraud with the requisite particularity, a plaintiff must set forth more than the neutral facts [such as time, place, and content] necessary to identify the transaction…, the plaintiff must set forth an explanation as to why the statement or omission complained of was false or misleading." *Yourish v. California Amplifier*, 191 F.3d 983, (9th Cir. 1999).

In evaluating plausibility, "courts must also consider an 'obvious alternative explanation' for defendant's behavior,'" such that [w]hen faced with two possible explanations, only one of which can be true and only one of which results in liability …, [s]omething more is needed" than just facts which are consistent with both explanations, "such as facts tending to exclude the possibility that the alternative explanation is true." *Eclectic Properties East, LLC v. Marcus & Millicap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014). The only "representation" complained of by United is that services of certain radiologists are billed by Sonoran instead of some alternate entity. United would have the Court infer a multi-person scheme being perpetrated by physicians, physician groups, venture capitalists, Sonoran, and RP, to defraud United. But cutting through its inflammatory language, the Complaint alleges nothing more than the ordinary business practice of certain radiologists affiliating with and providing services on behalf of Sonoran. United's Complaint is devoid of any alleged facts that exclude the possibility of this ordinary business practice and does nothing to move its fraud-based accusations into the realm of "plausible." Indeed, United's alleged motivation for radiologists switching to provide services on behalf of Sonoran in late 2020 is obtaining more out-of-network reimbursement in the NSA IDR process, which did not even exist then.

B. United Fails to Plead any Fraud or Misrepresentation (Count 1: Fraud and Count 2: Negligent Misrepresentation and Omission)

United's core fraud allegation, which United incorporates by express reference into all of United's counts, is that Sonoran misrepresented that Sonoran performed the services being billed when United contends the services were performed by other medical groups. Compl. ¶ 195-196. Yet, United does not plead that any other radiology group besides Sonoran holds the

staffing contract at the facilities associated with Sonoran's bills. United just insists as a conclusion that Sonoran is a "sham entity," which is not the sort of factual contention that the Court must accept. *Id.* ¶ 5. Pejorative conclusory adjectives do not constitute particularity.

"To prove fraud in Arizona, a plaintiff must plead: '(1) [a] representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) [the hearer's] right to rely thereon; and (9) the hearer's consequent and proximate injury.' " *Paz v. Arizona*, No. CV-14-02377-TUC-BPV, 2016 WL 7674582, at *3 (D. Ariz. Dec. 5, 2016). The alleged facts underlying these elements must satisfy Rule 8 plus Rule 9's particularity requirement.

Likewise, to bring a claim of negligent misrepresentation, a Plaintiff must plead facts that show that "(1) the defendant provided false information in a business transaction; (2) the defendant intended for the plaintiff to rely on the incorrect information or knew that it reasonably would rely; (3) the defendant failed to exercise reasonable care in obtaining or communicating the information; (4) the plaintiff justifiably relied on the incorrect information; and (5) resulting damage." *SPUS8 Dakota LP v. KNR Contractors LLC*, 641 F. Supp. 3d 682, 696-97 (D. Ariz. 2022) (citations omitted).

C. United's Silence on Which Physician Group Holds the Hospital Staffing Contracts Means United Has Not Plausibly Plead That Sonoran Was Not the Rendering Provider

United does not and cannot identify any false representation. The only "representation" United takes issue with is the identification of Sonoran as the medical group that performed and billed for the service. Compl. ¶ 195. But United's Complaint does not plead facts that address (1) whether Sonoran was the radiology group that holds the staffing contracts at the facilities associated with the services billed, and (2) the ability of a doctor to perform work for more than one medical group. This failure means that United's complaint does not cross the line from possible (i.e., the anything's possible line) versus plausible (the facts required to

plead a cause of action).

The very examples of physicians referenced in United's complaint are illustrative of the flaw in United's theory. For example, United points to SMIL's website, Dr. Howard Harvin's LinkedIn profile, and a continuing education webinar to support its allegation that Dr. Harvin had or has an affiliation with SMIL – i.e., an entity that today "provides state-of-the-art diagnostic medical imaging and interventional radiology through out 17 outpatient centers" through "contracted radiology Physicians"[16] – and therefore cannot also have an affiliation with Sonoran. Compl. ¶ 125-127. But United ignores that a doctor having affiliation with one group does not exclude that doctor being affiliated with other entities.. Indeed, SMIL's website and updated LinkedIn cited by United for Dr. Harvin do not mention that he also is a "clinical assistant professor at Stanford Health Care" – but United's pleadings confirm that he works for Stanford too. Compl. ¶ 27 ("Howard Harvin is currently working as a clinical assistant professor at Stanford Health Care.")[17] It is judicially noticeable that Stanford is located in Northern California, which is an entirely different state than Arizona.[18] Stanford also operates in the State where United already has the prior pending CA Lawsuit.

It is judicially noticeable that physicians can and often are affiliated with multiple physician groups. A physician's affiliations are publicly available from government sources, one being the Medicare Revalidation List on the CMS website.[19] Section 6401(a) of the Affordable Care Act, enacted in 2010, established a requirement for Medicare providers to revalidate Medicare enrollment information on a regular basis. 42 CFR § 424.515. This revalidation information, which includes a list of the organizations with whom a physician is affiliated with and reassigned their right to bill CMS[20], is publicly available. RJN, Exs. 12-

[16] https://www.esmil.com/
[17] *See also* https://stanfordhealthcare.org/doctors/h/howard-harvin.html.
[18] https://careers.stanfordhealthcare.org/us/en/locations
[19] https://data.cms.gov/tools/medicare-revalidation-list.
[20] *See* 42 CFR § 424.80(b)(1)-(2) (Medicare pays entities pursuant to reassignment of benefits for employee doctors and "if there is a contractual arrangement between the entity and the supplier under which the entity bills for the supplier's services.")

18.[21] Dr. Harvin's Medicare Revalidation List reflects that he is based in California, and has assigned his right to bill CMS to five organization, including (1) Sonoran Radiology, Ltd. (2) Stanford Health Care, (3) Southwest Diagnostic Imaging, LLC, (4) LPCH Medical Group Div of Lucile, and (5) Radiologists of Cape Cod Hospital. RJN, Ex. 23. The same is true for the other example physicians referenced in United's Complaint. Compare Compl. ¶¶ 87-96, 99-108, 134- 138, 143-155, with RJN, Exhs. 24-27 (Medicare Revalidation List results for Dr. Slethaug, Dr. Lai, Dr. Diegnan, and Dr. Barclay-White, all listing "affiliation with Sonoran Radiology Ltd" along with other physician groups).

United's complaint reflects that Sonoran billed United under its TIN for services rendered to United members by physicians affiliated with Sonoran under the physicians' NPI. But that is insufficient without factually pleading both (a) Sonoran lacked the staffing contract at the hospital locations where Sonoran billed, and (b) Sonoran did not contract for their services to fulfill Sonoran's staffing rights and obligations at those hospitals.

United's allegations fail to distinguish Defendants' ordinary business conduct from fraudulent activity, and thus, are insufficient under Rule 9(b). *In re Jamster Mktg. Litig.*, 2009 WL 1456632 at *5 (S.D. Cal. May 22, 2009) ("Without the adjectives, the allegations allege conduct consistent with ordinary business conduct and an ordinary business purpose. The challenge for Plaintiffs is to set forth sufficient allegations to distinguish ordinary business conduct [such as doctors being affiliated with more than one group] from fraudulent conduct. Pleading by adjective does not comply with Rule 9(b).").

1. RP and Sonoran have no duty or reason to state on *the* industry standard billing claim form that the rendering provider might also be, or was, affiliated with another physician group

United does not properly plead any fraudulent omission. "A defendant can only be liable for fraud by omission if it failed to disclose facts that it had a duty to disclose." *In re*

[21] The Court may take judicial notice of matters of public record on motion to dismiss. *U.S. v. Corinthian Colleges*, 655 F.3d 984 (9th Cir. 2011); *Snyder v. HSBC Bank, USA, N.A.*, 913 F.Supp.2d 755 (D. Az. 2012).

Arizona Theranos, Inc., Litigation, 308 F.Supp.3d 1026, 1043. Likewise, a count for negligent misrepresentation requires a duty to disclose. *See Valley Pain Centers LLC v. Aetna Life Insurance Company*, 2023 WL 2759022, at *7 (D. Az. Mar. 31, 2023) (affirming dismissal of negligent misrepresentation claim due to lack of allegation of fiduciary relationship giving rise to duty to disclose).

United admits that Sonoran does not have a participation contract with United.[22] United also does not, and cannot, allege that Sonoran has any fiduciary relationship with United, or any other duty to disclose on the standard claim form that the rendering provider belonged or also belongs to another physician group, or that RP previously acquired physician groups to which the rendering provider belonged. It is judicially noticeable that none of that information is required to be included on the industry standard billing form, the CMS-1500, or its electronic equivalent.[23] Indeed, the billing form, designed by CMS to include all sorts of other information, has no place to include whether the doctor was or is affiliated with other groups. This further shows that the dual affiliation United alleges is immaterial for billing. Moreover, United admits that its own claims data readily identifies that Sonoran's providers have or had affiliations with other medical groups. Compl. ¶¶ 75-78. So, United's conclusory alleged "ignorance" of the alleged omission or falsity is belied by the allegations in its Complaint.

2. United Also Has Failed To Plead Fraud with *Particularity*

As reflected on the judicially noticeable Medicare Revalidation List, Sonoran has provided radiology services through hundreds of radiologists. United has insisted that Sonoran

[22] United's counsel have also represented that their Complaint does not relate to any contracts, so United cannot rely on any contractual duty for what United claims was omitted.

[23] *See*, National Uniform Claim Committee ("NUCC") 1500 Claim Form Reference Instruction Manual, available at https://www.nucc.org/images/stories/PDF/1500_claim_form_instruction_manual_2024_07-v12.pdf ("1500 Manual") (RJN, Ex. 11). The 1500 Claim Form is the industry standard claim form used to submit billings for professional services, and is maintained by the NUCC. The NUCC Manual instructs that the identity and NPI of the rendering provider, e.g., the radiologist, be identified in box 24J (*id.* at 44) and the billing provider be identified by TIN in boxes 25 and 33 (*id.* at 49, 55). Nothing in the 1500 Manual, or 1500 form, requires identification of the rendering provider's other affiliations. (*Id.*, RJN, Ex. 11.)

is a "sham" entity that operates only as a "façade" in a billing scheme, yet United's Complaint admits that Sonoran received an NPI from CMS, meaning the federal government recognizes Sonoran as a real provider. The only "facts" pled in United's Complaint are five radiologists that United identified as members of other physician groups based on private websites. Not only are these "facts" demonstrably misleading given the Medicare Revalidation List, but they also ignore that doctors can be with multiple groups, and shows nothing about the hundreds of other radiologists through which Sonoran provides services.

United also makes no effort to even tie the five specified radiologists to any specified bill, let alone tie the hundreds of unidentified radiologists employed and contracted by Sonoran to the "tens of thousands of" unidentified bills that United asserts were purportedly improper (Compl, ¶ 183). This fails to meet the Rule 9(b) standard of pleading fraud with particularity.

D. United Fails to Plead Sufficient Grounds to Support Vacating the NSA IDR Awards Under 9 U.S.C. § 10 (Count Six)

United's Count 6, which seeks to vacate IDR awards, fails for the reasons set forth above in Sections V.A and B, *i.e.*, United has not plausibly alleged even common law fraud, let alone the level of fraud needed under the NSA to challenge IDR awards. The NSA only provides for post-award review, and even then, it restricts judicial review to the very limited circumstances for challenging awards under the Federal Arbitration Act ("FAA"). 42 U.S.C. § 300gg-111(c)(5)(E)(i). United has not met these steep standards.

1. An IDRE's Award Can Only be Challenged if Procured by the Limited Types of Fraud Adopted by the NSA by Reference to the FAA

Here, United challenges the decisions under Section10(a)(1) and 10(a)(4)[24] of the Federal Arbitration Act ("FAA") alleging all challenged awards were procured by fraud or undue means and that the IDREs exceeded their powers. Vacatur of an arbitration award is

[24] United relies on 9 USC 10(a)(2) as the second basis to vacate the IDR awards (see Compl. ¶ 255), but section 10(a)(2) permits vacatur where "there was evident partiality or corruption in the arbitrators." United has alleged no facts to support this argument, and appears instead to be arguing for vacatur under 9 USC 10(a)(4) on the grounds that the arbitrators exceeded their powers.

very rarely afforded, and the review is narrow. *See*, *United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 920 (9th Cir. 2009) (noting that "permissive grounds for vacatur" are limited to "four specific circumstances," and that courts "have strictly interpreted this standard, emphasizing that review of the award itself is both limited and highly deferential.") See also, *Gustin v. Kleen Concepts LLC*, No. CV-22-00525-PHX-DLR, 2022 WL 17361773, at *2 (D. Ariz. Dec. 1, 2022) ("Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances. Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award under' the Federal Arbitration Act.") (citations omitted) Thus, "[a]n arbitration award will fall under § 10(a) only in 'very unusual circumstances," and "challenges . . . to NSA IDR awards may rarely succeed." *Med-Trans Corp*., 700 F. Supp. 3d at 1085.

Any non-fraud-based challenges raised in United's Complaint fall outside the scope of Section 10. For example, United alleges that Sonoran purportedly initiated IDR "untimely" in two instances. (Comp., ¶¶ 161-163). But any such timeliness challenges had to be made to the IDRE no later than "not later than **1 business day** after the end of the 3-business-day period for certified IDR entity selection…," and only the IDRE is empowered to decide them. Section 10 does not provide for judicial review of whether submission to the IDRE was timely.

2. United has not alleged *the required type of* fraud or undue means

United's arguments under Section 10(a)(1) must satisfy Rule 9(b)'s particularity requirement for alleging fraud, as applied to the very narrow confines for pursuing fraud under the FAA that the NSA adopted. Federal courts have confirmed that application of the FAA standards to IDR challenges means "fraud or undue means" has "the same meaning in the NSA as in the FAA – nothing more.

Under the FAA, '[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.'" *Id*. at 620 (citations omitted). To survive a motion to dismiss, United must state the circumstances constituting this fraud with particularity. *Id*. at 622.

United cannot invoke fraud-based arguments to challenge arbitration awards without

alleging, with particularity, each of the following: (1) fraud "by clear and convincing evidence," (2) the fraud must was "not discoverable upon the exercise of due diligence prior to the arbitration," and (3) the fraud "fraud materially related to an issue in the arbitration." *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 (9th Cir. 1992).

Moreover, "Where fraud ... 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." *ABC Int'l Trades, Inc. v. Fun 4 All Corp*., 79 F. App'x 346, 348 (9th Cir. 2003). Federal courts have consistently held that one party allegedly misrepresenting facts to the arbitrator under the NSA falls woefully short of alleging fraud. Instead, fraud in this context 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* at 673.

a) United Failed to Allege Sufficient Facts to Establish Fraud by Clear and Convincing Evidence

As set forth above in Section V.B, United has not plausibly alleged fraudulent conduct at all, let alone with particularity. Thus, United has failed to allege sufficient facts to establish fraud by clear and convincing evidence, which is sufficient grounds to dismiss United's Count 6 for failure to state a claim for relief that can be granted.[25]

b) United Cannot Show The Alleged Fraud Was Not "Discoverable"

United asserts it "only recently" uncovered the fraudulent scheme and "could not have discovered the fraud prior to or during the IDR process. (Compl. ¶¶ 254, 258). But United's own complaint, and the CA Lawsuit undercuts this argument.

[25] The only additional allegation of any sort of misrepresentation by Sonoran concerns a **single** bill (out of purportedly tens of thousands) where the IDRE pointed to a "prior contract" rate that was "significantly higher than the QPA" paid and offered by United. (Compl., ¶¶ 175-182.) But the alleged misrepresentation for this bill was not pled with particularity and does not preclude that the IDRE was mistaken or that Sonoran was referencing a contract other than a full participation agreement. The Complaint does not indicate what, if anything, was submitted or told by Sonoran to the IDRE, what "contract" the IDRE was referencing, when, or in what form.

First, United relies on its own claims data from early 2021 to show that billing volume shifted from contracted provider groups to Sonoran. (Compl. ¶ 76). This alleged shift, evident in United's own data, was available more than a year before any IDR dispute could have been initiated. Moreover, by definition, United had access to its own claims data to identify the alleged fact that radiologists once affiliated with a contracted provider group were now identified on Sonoran claims. Also, United alleges these providers publicly identified themselves as being affiliated with contracted provider groups. (Compl., ¶¶ 91-95, 105-107, 125-127, 135-136). All this information predates the NSA IDR disputes United lost and now seeks to overturn.

Second, if United lacked information to assess a provider's network status, then due diligence requires United request additional information from Sonoran in the 30 days prior to making an initial payment, or in the 30-day NSA open negotiation period. United did not do so. Instead, United voluntarily paid as out-of-network for a year, participated in the IDR process for more than three years, and only cried "fraud" more than 4 years after Sonoran began operations – when United grew dissatisfied with its IDR results.

Third, the CA Lawsuit shows that the fraud United alleges was "discoverable" at least as early as April 14, 2023. RJN, Ex. 1. Yet it seeks relief for bills through today and prior restraint going forward.

3. United has not met the "high standard" for vacatur under Section 10(a)(4)

United argues that the IDREs overseen by CMS exceeded their powers by hearing ineligible disputes. But FAA § 10(a)(4) is a "high standard for vacatur" that affords courts only an "extremely limited review authority" warranted when an arbitration award exhibits a manifest disregard of law or is completely irrational. *HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1240–41 (9th Cir. 2022). "Manifest disregard ... requires something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand and apply the law. To demonstrate manifest disregard, the moving party must show that the arbitrator understood and correctly stated the law, but proceeded to disregard the same." *Id.* (citations omitted). The court must accept the arbitrator's findings, and "[t]here

must be some evidence in the record, other than the result, that the arbitrators were aware of the law and intentionally disregarded it." *Id*. "An arbitrator does not exceed its authority if the decision is a plausible interpretation of the arbitration contract." *U.S. Life Ins. Co. v. Superior Nat. Ins. Co.*, 591 F.3d 1167, 1177 (9th Cir. 2010).

United cannot satisfy this high bar. United does not allege that the IDREs were presented with United's basis for its eligibility challenges, but even if United did ever challenge the eligibility, "[i]t is not enough ... to show that the panel committed an error—or even a serious error." *Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp.,* 130 S.Ct. 1758, 1767 (2010). Moreover, this theory relies on the same allegations as United's defective 10(a)(1) argument, and fails for the same reasons discussed above.

E. United's Other Counts Fail to State a Cause of Action Because United Does Not Allege any Fraudulent Conduct

The remaining causes of action in United's Complaint are derivative of, and based and reliant on United's same meritless fraud allegations:

1. Count 3: Civil Conspiracy:

Civil conspiracy requires that two or more people "agree to accomplish an unlawful purpose or to accomplish a lawful object by unlawful means, causing damages." *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 38 P.3d 12, 36 (Ariz. 2002). Elements of the underlying tort must be satisfied to bring a civil conspiracy cause of action. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041-42 (9th Cir. 2011) (affirming dismissal of civil conspiracy to commit fraud for failure to plead misrepresentation to bring underlying fraud cause of action). The only underlying wrong alleged by United to support its Civil Conspiracy cause of action is "the billing scheme described herein" (Compl. ¶¶ 222), i.e., the same alleged fraud underlying Count One, meaning this cause of action fails with Count One as well.

Moreover, United fails to plead with particularity any agreement between RP, Sonoran, and any of the other alleged participants (private-equity firms, medical groups) identified in United's Civil Conspiracy count. This also defeats the conspiracy count.

2. Count 4: Money Had and Received and Count 5: Unjust Enrichment

A count for Money Had and Received is an equitable count that requires pleading that "the defendant has received or obtained possession of money of the plaintiff which in equity and good conscience he ought to pay over to the plaintiff." *Copper Belle Mining Co. of W. Virginia v. Gleeson*, 14 Ariz. 548, 551, 134 P. 285 (1913). The general rule is that "a party cannot recover money voluntarily paid with a full knowledge of the facts." *Copper Belle Mining Co. of W. Virginia*, 14 Ariz. at 554, 134 P. 285. The action is akin to an action for unjust enrichment. *Dream Team*, 2017 WL 3460806, at *3. "To prevail on an unjust enrichment claim, a plaintiff must allege: "(1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) absence of justification for the enrichment and the impoverishment; and (5) an absence of a remedy provided by law." *Perez v. First Am. Title Ins. Co.*, 810 F. Supp. 2d 986, 991 (D. Ariz. 2011) (quoting *Freeman v. Sorchych*, 226 Ariz. 242, 245, 245 P.3d 927 (Ct. App. 2011)).

Both counts rely on the same alleged fraud that, for reasons stated above, are not properly pleaded. (*See,* Compl. ¶¶ 230, 240 (on Counts 4 and 5 alleging only that "the wrongful conduct of Sonoran and Radiology Partners as described herein" as the basis for money had and received and unjust enrichment; ¶ 238 (unjust enrichment count based on "claims to be submitted to United containing the misrepresentation that Sonoran, rather than the medical groups controlled by Radiology Partners, performed the services billed).

3. Count 7, 8, 10, 11: Violation and Conspiracy to Violate State and Federal RICO Statutes[26]

To state a plausible RICO claim, United must allege that the Defendants "participate[d] in (1) the conduct of (2) an enterprise that affects interstate commerce (3) through a pattern (4) of racketeering activity." *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014) (citing 18 U.S.C. § 1962(c)). The pleadings must demonstrate the

[26] Arizona courts have interpreted the state law version of RICO "to mirror the federal RICO statute." *Aviva USA Corp. v. Vazirani*, 632 Fed. App'x 885, 889 (9th Cir. 2015). The Arizona and Federal RICO claims should be dismissed for the same reasons.

"enterprise," under element two, "has (A) a common purpose, (B) a structure or organization, and (C) longevity necessary to accomplish the purpose." *Id.* (citing *Boyle v. United States*, 556 U.S. 938, 946 (2009))." *Valley Pain Centers LLC v. United Life Ins. Co.,* No. CV-19-05395-PHX-DJH, 2023 WL 2759022, at *8 (D. Ariz. Mar. 31, 2023).

When based in fraud, these allegations must also be plead with particularity under Rule 9(b) standards. (*Id.*; see also*, Chagby v. Target Corp.*, 358 Fed. Appx. 805 (9th Cir. 2009) (affirming dismissal of fraud-based RICO because the allegations were insufficient to "create an obvious inference of fraud," and failed to meet 9(b) pleading standards).

The only predicate act of racketeering activity alleged by United for its federal RICO count is "the use of wires and mails to submit fraudulent claims to United." Compl., ¶¶ 293. Likewise, the only alleged racketeering activity alleged by United under A.R.S. § 13-2301(D)(4) are the same defective allegations of a "scheme or artifice to defraud," or "multiple acts of fraud" under the same theory advanced in its fraud count, the alleged misrepresentation "that Sonoran performed services actually rendered by other medical groups" Compl., ¶ 266. Thus, United's RICO counts fail because United has not stated a plausible claim for fraud, let alone with any particularity.

Moreover, like with common law fraud, courts within the Ninth Circuit have rejected efforts to characterize ordinary business conduct and relationships as an actionable "enterprise" under RICO. *See, e.g., Shaw v. Nissan N. Am., Inc*., 220 F. Supp. 3d 1046, 1054 (C.D. Cal. 2016) ("[C]ourts have overwhelmingly rejected attempts to characterize routine commercial relationships as RICO enterprises*.")*; *In re Arizona Theranos, Inc., Litig.*, 308 F. Supp. 3d 1026, 1060 (D. Ariz. 2018) (same); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prods. Liab. Litig.*, 826 F. Supp. 2d 1180, 1202 (C.D. Cal. 2011) (stating "Plaintiffs merely allege that the Defendants are associated in a manner directly related to their own primary business activities, which is insufficient to state a claim under § 1962(c)," the operative complaint alleged no more than defendants' primary business activity was conducted fraudulently, which "is incompatible with the types of conduct RICO was enacted to prevent").

Here, the allegations in United's complaint are nothing more than United taking issue with RP and Sonoran's ordinary organizational relationships and business activities amongst themselves. *See also*, *Gomez v. Guthy-Renker, LLC*, 2015 WL 4270042, at *9 (C.D. Cal. July 13, 2015) (noting the "widespread consensus among courts" that routine business relationships are insufficient to impose RICO liability); *In re Countrywide Fin. Corp. Mortgage-Backed Sec. Litig.*, 2012 WL 10731957, at *8 (C.D. Cal. June 29, 2012) ("Parties that enter commercial relationships for their own gain or benefit do not constitute an enterprise.") (internal quotations omitted). United failed to allege the requisite separate "enterprise," and indeed, admits RP and Sonoran are affiliates. Thus, even if there had been a properly alleged fraud here – and there isn't – United cannot elevate it into RICO.

Counts 8 and 11 for RICO Conspiracy also necessarily fail. "Because United has failed to adequately plead a substantive RICO violation, it cannot bring a Section 1962(d) conspiracy claim." *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 559 (9th Cir. 2010); *Howard v. America Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000) ("the failure to adequately plead a substantive violation of RICO precludes a claim for conspiracy")." *Valley Pain Centers LLC v. United Life Ins. Co.,* No. CV-19-05395-PHX-DJH, 2023 WL 2759022, at *9 (D. Ariz. Mar. 31, 2023).

4. Count 9: Aiding and Abetting a Tort

A claim for aiding and abetting a tort "requires proof of three elements: (1) the primary tortfeasor must commit a **tort** that causes injury to the plaintiff; (2) the defendant must know that the primary tortfeasor's conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of the breach." *Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 201 Ariz. 474, 485, 38 P.3d 12, 23 (2002). Aiding and abetting requires that "the defendants must know that the conduct they are aiding and abetting is a tort." "There must be some distinction between the primary tort and the aiding and abetting conduct. Aiding and abetting is derivative in the sense that absent a predicate primary tort, there can be no claim for aiding and abetting which is a secondary form of liability." *Aguado v. XL Ins. Am.*, 721 F. Supp. 3d 811, 816 (D. Ariz. 2024).

The only alleged "tort" under this count are the derivative alleged "commission of torts against United, as set forth herein." (Comp., ¶ 277.) United fails to plead Count 9 for the reasons it fails to plead the other asserted torts on which this count depends. Further, United makes no effort to describe any conduct that is distinct from the primary tort that would constitute aiding and abetting.

5. Count 12: Declaratory Relief

United's declaratory relief count seeks nothing more than affirmation that it prevails on its other counts. As discussed herein, United cannot circumvent the NSA and the relief United seeks is superfluous to its other counts. Moreover, the Declaratory Judgment Act does not provide an independent cause of action. *City of Reno v. Netflix, Inc*., 52 F.4th 874, 878–79 (9th Cir. 2022). See also *Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011) ("[T]he plaintiffs have not alleged a cognizable cause of action and therefore have no basis upon which to seek declaratory relief. Nor does the Declaratory Judgment Act ... provide a cause of action."). Here, a declaratory judgement cannot stand without the other causes of action which fail for the reasons articulated above. Declaratory judgment will serve no useful purpose here, and nothing in the Complaint supports declaratory relief

V. CONCLUSION

The Court should transfer, or in the alternative dismiss and/or stay, United's complaint. This health plan and competitor had no valid basis to file a new federal lawsuit alleging the same core wrongdoing already pending for over two years in the Central District of California. Moreover, facilities, not United, gets to choose the staffing radiology group entity.

Dated: November 3, 2025

Respectfully submitted,

KING & SPALDING LLP

By: */s/Glenn Solomon*

Glenn Solomon
Sara Brinkmann
Christopher Charles Jew
Connor R. Brewer
William Mavity

Attorneys for Defendants
Radiology Partners, Inc.
Sonoran Radiology, Ltd.