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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**
17

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

20 Plaintiffs,

21 v.

22 Radiology Partners, Inc.; and Sonoran
Radiology, Ltd.,
23 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 FRCP 12(b)(6)**

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

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1 Defendants Sonoran Radiology, Ltd. (“Sonoran”) and Radiology Partners, Inc. (“RP”)
2 respectfully move to transfer, stay, or dismiss the Plaintiffs’ Complaint with prejudice pursuant
3 to the First-to-File Rule or, alternatively, to dismiss under F.R.C.P. 12(b)(6).

4 I. INTRODUCTION

5 Sonoran is a RP affiliated radiology group entity that has provided professional
6 radiology services to patients at Arizona facilities, including Banner Health and HonorHealth
7 systems, which have contracted with Sonoran to staff their radiology departments since about
8 2020. Since commencing operations in 2019, Sonoran has obtained contracts with certain
9 major healthcare insurers at times, such as Blue Cross and Blue Shield of Arizona,¹ but has
10 not accepted any below market offer from Plaintiffs (collectively, “United”). Resultingly,
11 United concocted this lawsuit as part of its national business strategy to use lawfare to advance
12 United’s anticompetitive goals.

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

15 Second, United seeks to get out of paying awards adjudged under the federal No
16 Surprises Act² (“NSA”) Independent Dispute Resolution (“IDR”) process, because the
17 independent IDR entities (“IDREs”), which are overseen by the Centers for Medicare and
18 Medicaid Services (“CMS”) repeatedly have found that the fair reimbursement owed to
19 Sonoran is significantly higher than the low-ball initial Qualifying Payment Amount (“QPA”)
20 United paid for radiology services. United spends much of its Complaint grumbling about its
21 repeated losses to Sonoran in the IDRE forum.

22 Third, United wants to blame Sonoran for the higher costs, consisting both of the
23 adjudged NSA awards and administrative fees, that United thrust upon its self-funded
24 employer customers by refusing to contract with Sonoran at sustainable rates. These expenses
25 were avoidable. United only complains now because it has repeatedly lost.

26
27 ¹[https://www.radpartners.com/2023/05/sonoran-radiology-and-blue-cross-and-blue-shield-
of-arizona-reach-new-contract-agreement/](https://www.radpartners.com/2023/05/sonoran-radiology-and-blue-cross-and-blue-shield-of-arizona-reach-new-contract-agreement/).

28 ² 42 U.S.C. §§ 300gg-111-12, et seq.

1 Fourth, United’s wholly owned affiliate, Optum, has been expanding its own radiology
2 business through the acquisitions of medical groups with radiologists. The United
3 conglomerate now employs and contracts with more doctors than any other company in the
4 nation, making it both an existing and growing competitor of RP. These bogus lawsuits by
5 United benefit its competing provider business.

6 This is not the first time United has pursued these inflammatory theories as part of its
7 lawfare against RP, radiology medical groups and their doctors. In 2023, United filed a still
8 pending federal court lawsuit with these same theories in the Central District of California (the
9 “CA Lawsuit”), which alleges a national scheme. The judge in the CA Lawsuit granted a
10 motion to compel arbitration and stayed that lawsuit pending arbitration outcome. In 2024, a
11 Texas arbitration Panel rejected United’s same fraud theories (the “TX Arbitration”). There
12 are other pending arbitrations in Florida, North Carolina, and Colorado. All these cases involve
13 United’s same erroneous core theory: that the RP-affiliated group billing purportedly didn’t
14 have the right to bill for the services at the facilities where the group holds the staffing contract.
15 The core problem with United’s theory is that United cannot control choices made by hospitals,
16 groups and doctors.

17 The CA Lawsuit is still pending, and if United wanted to try to re-engage the federal
18 court system, then United should have asked the California Court for permission. Instead,
19 United improperly filed this copycat lawsuit in Arizona, in a blatant attempt at forum shopping.
20 This Court should either transfer this duplicative lawsuit to the Central District of California
21 based on the first to file doctrine, or alternatively, dismiss and/or stay it.

22 While United has dressed up this new filing by saying the same core theory now also
23 affects the NSA, the same underlying argument about which medical group has the right to
24 bill permeates everywhere. United contends radiologists must remain affiliated with, and
25 provide services for, whatever radiology group United demands, and that hospitals must
26 continue to use whatever group United insists upon. In fact, it is the hospitals, groups and
27 doctors who have the right and freedom to make their own contracting decisions – not United.
28

1 United’s complaint is premised on implausible foundations. For instance, United’s
2 pleadings in the CA Lawsuit admit the facility determines which group staffs its radiology
3 department. But United does not allege there, here, or anywhere, that Sonoran lacks the
4 staffing contract for the facilities where it bills. Likewise, United’s CA Lawsuit admits the
5 facility’s chosen group has the right to use both employed and contracted doctors. But United
6 doesn’t allege there, here, or anywhere, that Sonoran lacks contracts for services from the
7 doctors. Instead, United merely presumes hospitals and doctors cannot switch medical groups,
8 and worse, that doctors supposedly cannot simultaneously be affiliated with multiple medical
9 groups. The latter presumption is particularly silly. Judicially noticeable government data,
10 from the Medicare Revalidation Database published by CMS, reflects that Sonoran’s
11 radiologists, including those who United contends are not affiliated with Sonoran, have
12 reassigned their right to bill CMS to both Sonoran **and** other groups. Radiologists often read
13 scans remotely, making it easier and increasingly more common for them to provide services
14 for multiple radiology groups.³

15 The fact that hospitals and radiologists switched to Sonoran rather than some other
16 radiology group entity whose rates United would prefer instead does not mean Sonoran billed
17 for services provided by the other group, nor make Sonoran a “sham” entity, as United
18 pejoratively contends. United’s own Optum affiliates buy and consolidate medical groups and
19 doctors under the Optum brand all the time.

20 Furthermore, United cannot meet the extremely high standard required to vacate NSA
21 IDRE awards for “fraud,” as United could have – but did not – raise eligibility challenges to
22 IDREs themselves. Resultingly, this Court can dismiss United’s Complaint if the lawsuit is
23 not transferred, stayed, or dismissed pursuant to the first-to-file rule.

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26
27 ³See [https://radiologybusiness.com/topics/healthcare-management/medical-practice-
28 management/radiologists-increasingly-affiliating-multiple-practices-trend-most-pronounced-
among-young-rads](https://radiologybusiness.com/topics/healthcare-management/medical-practice-management/radiologists-increasingly-affiliating-multiple-practices-trend-most-pronounced-among-young-rads).

II. BACKGROUND

A. The Parties

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

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 of Sonoran’s trade names, filed in 2019, which are similar to “doing business as” names and not legally required: (1) Radiology Partners SMIL, (2) RP SMIL, (3) Radiology Partners Valley, (4) RP Valley, (5) Radiology Partners Saguario, (6) RP Saguario, and (7) RP Sol.⁷ See, ECF No. 24 Request for Judicial Notice (“RJN”), Ex. 9. The court also can take judicial notice that CMS’ Medicare Revalidation Database⁸ reflects that 1,094 physicians have assigned to Sonoran their right to receive benefits for services rendered to Medicare patients. *See*, RJN Ex. 19. This means these physicians have submitted paperwork to the government representing they are employed by or contracted with

⁴ <https://www.radpartners.com/about-us/our-practices/>.

⁵ <https://www.radpartners.com/about-us/our-team/>

⁶ <https://sonoranradiology.radpartners.com/>

⁷ The Court may take judicial notice of matters of public record on motion to dismiss. *United States v. Corinthian Colleges*, 655 F.3d 984 (9th Cir. 2011); *Snyder v. HSBC Bank, USA, N.A.*, 913 F. Supp. 2d 755 (D. Ariz. 2012).

⁸ <https://data.cms.gov/tools/medicare-revalidation-list>

1 Sonoran. *See*, RJN at pp. 6 – 8. Notably, the number of providers who have reassigned benefits
 2 to Sonoran – 1,094 - is not the same as the number of providers who have reassigned benefits
 3 to the other entities United references and prefers: Southwest Diagnostic Imaging, LLC – 231,
 4 Associated Valley Radiology, Ltd. – 303. *Compare* RJN Ex. 19, *with* RJN Exs. 20, 21.

5 **United** is the largest health insurance and benefits company in the United States, and
 6 its parent, United Health Group (“UHG”) is one of the largest companies in the world,
 7 currently Number 3 on the 2025 Fortune 500 list. United’s annual profits have increased over
 8 the last decade from \$5.6 billion to \$20.1 billion. Through Optum and other subsidiaries, UHG
 9 operates as both payor and provider businesses, including as a radiology service provider
 10 itself.⁹ United affiliates now are the nation’s largest employer and contractor of physicians on
 11 the provider side, with more than 70,000 physicians, including radiologists.¹⁰ Thus, United is
 12 an actual and growing competitor of RP and RP-affiliated medical groups. United’s huge size
 13 on both sides of the payor-provider divide helps it exert outsized leverage in negotiations, and
 14 sometimes leads it to launch untenable lawsuits, like this one, to try to pressure doctors,
 15 medical groups, and their agents, into submission.

16 **B. Prior Disputes Between the Parties and Their Affiliates**

17 United falsely contends that it “only recently uncovered the scheme and, in all respects,
 18 has acted with reasonable diligence to now promptly seek vacatur of the IDR awards at issue.”
 19 Compl. ¶ 258. But judicially noticeable court records confirm otherwise.

20 **C. United Filed a Federal Lawsuit with the Same Claims as Here**

21 On April 14, 2023, one of the United plaintiffs here, United HealthCare Services, Inc.,
 22 filed the same core theories against RP in the “CA Lawsuit” alleging a national scheme. *See*,
 23 RJN Ex. 1 (“CA Compl.”) That first federal court lawsuit paralleled counterclaims that United
 24 HealthCare of Texas, Inc. (“UHCTX”) had filed in the TX Arbitration initiated by another RP-

25
 26 ⁹ <https://www.optum.com/en/care/specialty-care/radiology.html>

27 ¹⁰ [https://radiologybusiness.com/topics/healthcare-management/mergers-and-](https://radiologybusiness.com/topics/healthcare-management/mergers-and-acquisitions/radiologists-unitedhealth-physician-practice-crystal-run)
 28 [acquisitions/radiologists-unitedhealth-physician-practice-crystal-run](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).

1 affiliated group, Singleton Associates, P.A. (“Singleton”), because United had started paying
2 Singleton 75% below the parties’ contract, based on an alleged replacement contract United
3 unlawfully procured through a DocuSign spamming scheme United launched during the 2020
4 pandemic. A few months later, to try to circumvent RP’s motion to compel arbitration, United
5 filed a First Amended Complaint in California, on August 2, 2023 adding allegations of
6 purported examples of the core alleged national scheme by adding references to other RP
7 affiliated groups in Florida and North Carolina, which United called just more examples of the
8 scheme. See, RJN Ex. 2 (“CA FAC”).

9 In both the CA lawsuit and here, United’s core theory was and remains that, allegedly,
10 “Radiology Partners, caused its affiliated medical groups to bill for services that they did not
11 perform.” *Compare* CA Compl. ¶ 3; CA FAC ¶ 3, with Complaint ¶ 71. United expressly
12 alleged that the scope of the CA Lawsuit was around the country, not limited to just the
13 multiple examples United referenced. *See, e.g.*, CA FAC, ¶ 88 (“On information and belief
14 Radiology Partners engaged in its fraudulent billing scheme in several states **across the**
15 **country**. The following are just a few examples of Radiology Partners’ scheme.”); *see also id.*
16 ¶ 56 (“The examples provided below [regarding Texas, Florida, and North Carolina RP
17 affiliated groups] are merely examples, and are not intended to limit the scope of this case.”).

18 **D. RP Compelled United to Arbitrate and the CA Lawsuit Remains Stayed**
19 **and Subject to the California Court’s First in Time Jurisdiction**

20 Following United’s filing of the CA FAC, the California Court compelled United to
21 arbitrate its parallel claims against RP. See, RJN, Ex. 3. The California Court also stayed the
22 CA Lawsuit, which avoided the risk of inconsistent results on the underlying core alleged
23 wrongdoing. *Id* at p. 9. (granting stay). And the California Court ordered the parties to provide
24 periodic updates. *Id.*

25 On August 7, 2024, the Arbitration Panel in the TX Arbitration issued a Final Award,
26 which Singleton later confirmed as a final judgment. *See* RJN, Exs. 4, 5 (Application to
27 Confirm Final Award; Agreed Final Judgment). The Final Award determined that neither party
28 would recover **anything** from the other, including that “United [UHCTX] is not entitled to

1 **any** recovery against Singleton.” Ex. 4 at p. 6 (emphasis added).

2 The CA Lawsuit remains stayed pending resolution of arbitrations pending between
3 United and its affiliates and RP and its affiliates; and the parties continue to file status reports
4 to the court in the CA Lawsuit. Indeed, a recent joint update to the California Court identified
5 this new Arizona lawsuit, showing that United agrees there is an overlap between that earlier
6 filed lawsuit and this one. *See* RJN, Ex. 6 at p. 2.

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

9 Radiology is a critical hospital specialty. CMS mandates all hospitals maintain or have
10 access to radiological services 24/7, as a condition of participation in the Federal healthcare
11 programs. *See*, 42 C.F.R. § 482.26. The hospital provides the imaging equipment (e.g., the
12 PET, CT, or MRI machine), and the radiologists read and interpret those images. United
13 admitted in its CA Lawsuit that radiology groups “staff[] the facility’s radiology department
14 using the radiologists who are employed by **or otherwise contracted with** the medical group.”
15 *See* CA FAC, ¶¶ 39-41 (emphasis added). This shows United recognizes medical groups can
16 get doctor services by contracting for, rather than employing the doctors. United has not
17 alleged there, or here, that Sonoran lacks an employment or contractual relationship for
18 services from the doctors to provide services on behalf of Sonoran. Rather, United just
19 illogically alleges that a doctor’s affiliation with another entity is itself evidence of the lack of
20 a relationship with Sonoran.

21 Likewise, when facilities contract with radiology groups, the industry norm, which
22 United has recognized in its pleadings in the CA Lawsuit, is for facilities to contract with “a
23 single medical group to perform radiology services for that facility.” *CA FAC*, ¶ 42. United
24 also admits that (1) “A medical group can only perform services at a given facility if it is
25 contracted by that facility to provide services[,]” and (2) “When a medical group is contracted
26 with a facility to provide radiology services, the medical group whose physicians performed
27 the services bills insurance companies using the medical group’s name and TIN[,]” because
28 “[w]hen a medical group’s physician performs the service, the medical group is the provider

1 who rendered the service and can, thus, bill for that service.” *Id.* ¶¶ 42-44. Likewise, courts
 2 have recognized that only the group holding the hospital staffing contract can provide and bill
 3 for radiology physician services at the facility.¹¹

4 United’s admissions and the law show that only Sonoran can render and bill for
 5 radiology services provided at a contracting facility when Sonoran holds the staffing contract
 6 for that facility. United’s lawsuit fails to allege that any other groups presently hold the staffing
 7 contracts, or even that United asked any of the hospitals which groups held the contracts.

8 **F. Since Jan. 1, 2022, the NSA Governs Sonoran’s Reimbursement from United**

9 Before the federal NSA became effective, out-of-network radiology providers like
 10 Sonoran received payments from United “calculated according to the terms of each patient’s
 11 specific health plan.” Compl. ¶¶ 23-27. Thus, historically, an insurer like United might pay
 12 nothing to an out-of-network provider like Sonoran, leaving United’s members on the hook
 13 for the whole bill. Indeed, United touted to members that they faced exposure to paying the
 14 balance of whatever United did not pay, so as to drive members to go to in-network providers.

15 The federal NSA, effective January 1, 2022, precludes health plans like United from
 16 leveraging their members with this additional financial exposure. So, United decided to just
 17 make low ball payments to providers, forcing them to either take whatever United unilaterally
 18 chose to pay, or to pursue relief from the CMS-overseen IDREs under the NSA.

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

21 When a hospital chooses a medical group to staff a specialty department and gives that
 22 group the right to bill, the medical group bills for the services provided by the doctor (the
 23 professional component) and the hospital bills for the use of the facility involved in the service

24 ¹¹ See, e.g., *Morgan, Strand, Wheeler & Biggs v. Radiology, Ltd.*, 924 F.2d 1484, 1487 (9th
 25 Cir. 1991) (affirming summary judgment for Arizona hospital and its contracted radiologist
 26 group in action brought by competitor radiology group; finding “hospitals generally have
 27 contracts with radiologists to insure prompt and reliable image interpretations when physicians
 28 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).

1 (the technical component). *See, e.g., Daniel F. Shay, Physicians and Medicare Diagnostic*
2 *Testing: Untangling the Gordian Knots*, 11 J. Health & Life Sci. L. 1, 4 (2018) (diagnostic
3 tests are broken into a “technical component” and a “professional component”). This two-
4 tracked billing system, and the fact that insurers may choose to contract with a hospital but not
5 the staffing medical group, means that patients can receive services from out-of-network
6 hospital-based specialists even when the hospital is in-network.

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

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

19 The IDR process includes deadlines for United to raise to the IDRE any contention that
20 services Sonoran submits are not eligible under the NSA, including because the services are
21 contracted in-network services with another medical group, as United now alleges here.¹²
22 United does not allege it ever made such an eligibility challenge in any of the “tens of
23 thousands” of IDR proceedings about which it complains. (Compl. ¶¶ 7, 183.) Notably, IDREs
24 are not a rubber stamp; between April 15, 2022 – July 31, 2025, IDREs closed more than
25

26
27 ¹² *See Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*,
28 <https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf>,
(accessed Oct. 23, 2025) at p. 17, §5.5.

1 630,000 disputes after finding them ineligible for the NSA.¹³

2 CMS guidance provides a 30-day period from the receipt of the IDR claim for the health
3 plan to make an initial payment¹⁴ or issue a notice of denial of payment.¹⁵ If a provider is
4 dissatisfied with the health plan's initial determination, it may send an "Open Negotiation
5 Notice" to kick off a mandatory 30-day negotiation period regarding the payment amount.
6 During this time, the provider identifies its TIN, and the parties may continue to communicate
7 regarding the disputed claim.¹⁶ Thus, for all the IDR disputes with Sonoran, United knew and
8 could have raised with the certified IDRE whether those individual radiologist's claims were
9 NSA eligible. The IDR process may only be initiated after the 30-day negotiation period.

10 The NSA also requires that "[i]f the non-initiating party believes that the Federal IDR
11 Process is not applicable, the non-initiating party must notify the Departments... as part of the
12 certified IDR entity selection process. This information must be provided not later than **1**
13 **business day** after the end of the 3-business-day period for certified IDR entity selection..."¹⁷
14 The IDRE is required to determine that the dispute is eligible for the IDR process, and if

16 ¹³ See <https://www.cms.gov/nosurprises/policies-and-resources/reports> (accessed Nov. 7,
17 2025) at (Identifying that 630,428 of the 3,344,616 disputes closed between April 15, 2022
– May 31, 2025, were closed because the IDREs found the disputes ineligible).

18 ¹⁴ This 30-day period gives Aetna a chance to ask for information on "whether the services are
19 subject to the protections of the [NSA]. See Guidance for Disputing
20 Parties, [https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-
2023.pdf](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
21 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).

22 ¹⁵ See Guidance for Disputing Parties, [https://www.cms.gov/files/document/federal-idr-
guidance-disputing-parties-march-2023.pdf](https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf) (accessed 10/23/25), p. 17, § 5.5.

23 ¹⁶ See [https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-
act/open-negotiation-notice.pdf](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
24 as identifying the rendering provider. See 86 Fed. Reg. 55994 ("Items and services are billed
25 by the same provider or group of providers or facility or same provider of air ambulance
26 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
27 TIN, this will allow group practices to batch together qualified IDR items or services.").

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

1 eligibility is challenged, the IDRE can ask for documents and/or an explanation justifying the
 2 parties' respective positions.¹⁸ United does not allege that it raised any such challenges with
 3 the IDREs. CMS also "maintains an online portal through which providers may submit
 4 complaints regarding the IDR process." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*,
 5 140 F.4th 271, 277 (5th Cir. 2025). United does not allege that it availed itself of that either.

6 3. United's Allegations Rely on Information Always Available to United,
 7 Not Newly Discovered Information

8 The allegations and judicially noticeable information show that all the facts United
 9 pleads in support of its fraud allegations were available to United at the time it paid Sonoran's
 10 bills and engaged in the IDR process. United admits the bills it received from Sonoran included
 11 industry standard, required information, including Sonoran's TIN as the provider group billing
 12 the claim, the individual radiologist's NPI who rendered the service, and location information
 13 indicating which hospital or facility the services were provided. (Compl. ¶¶ 73, 76, 89-91; *See*
 14 *also* RJN, Ex. 11 [National Uniform Claim Committee ("NUCC") 1500 Claim Form
 15 Reference Instruction Manual] ("NUCC Manual")).¹⁹

16 United's complaint here relies on provider group websites and social media sites like
 17 LinkedIn to argue that Sonoran radiologists are also affiliated with RP or another provider
 18 group. (Compl. ¶¶ 91-95, 105-07, 125-27, 135-36). But that does not disprove the same
 19 radiologists are also contracted with Sonoran. Similarly, United alleges that other bills show
 20 these radiologists sometimes were providing services on behalf of other radiology groups in
 21

22 ¹⁸ *See* 45 C.F.R. § 149.510(c)(1)(v) ("[T]he certified IDR entity selected must review the
 23 information submitted in the notice of IDR initiation to determine whether the Federal IDR
 24 process applies. If the Federal IDR process does not apply, the certified IDR entity must notify
 25 the Secretary and the parties within 3 business days of making that determination."). The IDRE
 26 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.

27 ¹⁹ The 1500 Claim Form is the industry standard to submit bills, and is maintained by the
 28 NUCC. The NUCC Manual instructs providers to identify the physician NPI in box 24J (RJN
 Ex. 11 at 44) and the billing provider by TIN in boxes 25 and 33 (*Id.* at 49, 55).

1 the past. (Compl. ¶ 76). Once again, this does not mean the radiologists were not contracted
 2 with Sonoran later, or simultaneously. Moreover, none of the allegations are contrary to
 3 United’s admissions in the CA Lawsuit that the medical group staffing a facility is the
 4 provider, whether the group provides services via employees, contractors, or both.

5 **III. THIS COURT SHOULD TRANSFER, DISMISS AND/OR STAY THIS CASE**

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

7 United’s complaint is duplicative of the earlier CA Lawsuit United filed against RP and
 8 should be transferred. The first-to-file rule is a “generally recognized doctrine of federal
 9 comity which permits a district court to decline jurisdiction over an action when a complaint
 10 involving the same parties and issues has already been filed in another district.” *Winters v.*
 11 *Quicken Loans Inc.*, 2021 WL 948767, at *2 (D. Ariz. Mar. 12, 2021) (quoting *Pacesetter Sys.,*
 12 *Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982)).

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

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

22 As described above, United filed the CA Lawsuit in 2023, more than two years before
 23 filing this lawsuit, with several arbitrations filed in between. Following RP’s Motion to
 24 Compel Arbitration, the court in the CA Lawsuit stayed the action pending arbitration
 25 involving the same core issue. *See United HealthCare Servs., Inc. v. Radiology Partners, Inc.*,
 26 2023 WL 6908674 (C.D. Cal. Sept. 27, 2023). Instead of adding its parallel allegations to the
 27 then already pending TX Arbitration, United filed nothing new against RP for over a year.
 28 Then, several months after the TX Arbitration concluded in 2024, United initiated parallel

1 arbitrations in Florida and North Carolina with the same core national scheme allegations as
2 in the CA Lawsuit. The next year, 2025, United filed a parallel arbitration in Colorado. Now,
3 with the CA Lawsuit and all these pending arbitrations addressing the same core allegations
4 of the same national scheme asserted in the CA Lawsuit, United has filed this copycat Arizona
5 lawsuit, rather than going back to the California Court that issued the stay. Thus, the
6 chronology of the two lawsuits—the first factor — strongly weighs in favor of applying the
7 first-to-file rule to transfer this parallel dispute back to California.

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

9 The first-to-file rule considers “substantial similarity of parties” and does not need exact
10 overlap. *Kohn L. Grp., Inc.*, 787 F.3d at 1240–41; see *Slick Slide LLC*, 2025 WL 904489, at
11 *2 (“As to the second factor—similarity of the parties—exact identity of the parties is not
12 required.”). “[C]ourts have routinely” applied the first-to-file rule when there are additional
13 defendants or plaintiffs. *Slick Slide LLC*, 2025 WL 904489, at *2.

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

28 Here, as in the CA Lawsuit, United Healthcare Services, Inc. is a plaintiff and RP is a

1 defendant. The other parties United added to this matter are all subsidiaries and/or affiliates.
2 UnitedHealthcare Insurance Co. and UMR, Inc. are subsidiaries of United, and all three are
3 subsidiaries of UnitedHealth Group Inc. *See* ECF No. 2. Sonoran is a subsidiary of RP. *See*
4 ECF No. 19. Thus, the parties in the CA Lawsuit and here have “substantial similarity.” *Kohn*
5 *L. Grp., Inc.*, 787 F.3d at 1240–41.

6 Moreover, United has “employed the same counsel in both cases,” which courts also
7 use in the first-to-file analysis. *See Slick Slide LLC*, 2025 WL 904489, at *2.

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

9 Courts evaluating the third factor look at the similarities between the lawsuits to
10 determine if they involve “substantially similar” issues. *Kohn L. Grp., Inc.*, 787 F.3d at
11 1240. There is no requirement for the issues be “identical.” *Id.* Only substantial overlap
12 between issues in the two cases is needed even when distinctions exist. “When analyzing if
13 two lawsuits have substantially similar issues, the Court must determine whether there is
14 ‘substantial overlap’ between the issues.” *Paparella*, 2023 WL 2463778, at *2–3; *Slick Slide*
15 *LLC*, 2025 WL 904489, at *2 (“[T]he Court finds that while there are some distinctions in the
16 legal questions in the cases, there is substantial overlap between the factual issues in the cases
17 such that transfer would be [appropriate].”).

18 A plaintiff cannot avoid transfer by simply adding other claims. *See Sprout Financial,*
19 *LLC*, 2020 WL 1482627, at *3 (there is substantial similarity between the issues raised in both
20 actions because, even though the second action “brought several other claims,” but many of
21 the alleged facts “directly relate[]” to the same key issues”).

22 United’s core theories in the CA Lawsuit and the present action are the same. *See supra*,
23 section II.C. Both alleged that RP and its affiliated medical groups engaged in, to use United’s
24 own same words, a “classic form of healthcare fraud” called “pass-through billing” by causing
25 “its affiliated medical groups to bill for services that they did not perform.” CA FAC, ¶ 3;
26 Compl. ¶ 6. Moreover, both actions allege that United’s contracts with other groups
27 supposedly applied to those locations. CA FAC, ¶¶ 9-10, 131–41; Compl. ¶¶ 6, 84-111. Both
28 lawsuits fail to address which physician entity holds the hospital staffing contract, making this

1 issue a common flaw in United’s core theories there and here.

2 Ultimately, United alleges the same core facts about which group provides the services
3 and asserts parallel causes of action: fraud; negligent misrepresentation and omission; money
4 had and received; unjust enrichment; and RICO violations. CA FAC 2, ¶¶ 130–211, Compl.
5 ¶¶ 193–312. United adding arguments about the NSA does not change the underlying alleged
6 theory that the services purportedly were not rendered by the RP affiliated medical groups.
7 Thus, the third factor supports transfer too.

8 **E. Judicial Economy Supports Applying the First to File Rule**

9 Moreover, transferring, or in the alternative, dismissing or staying this matter would
10 “maximize judicial economy, consistency, and comity.” *Kohn L. Grp., Inc.*, 787 F.3d at 1240.
11 Allowing one court to resolve the issues related to the alleged disclosure will avoid
12 “inconsistent judgments.” *C21FC LLC v. NYC Vision Cap. Inc.*, 2022 WL 2646168, at *4 (D.
13 Ariz. July 8, 2022); *RSC Equip. Rental Corp. v. Foster*, 2009 WL 10673090, at *3 (D. Ariz.
14 Aug. 3, 2009) (“There is a possibility of inconsistent judgments in the two cases, and the
15 determination of the same issue in two different courts would unnecessarily burden the federal
16 judiciary.”). These considerations further tilt the balance in favor of transfer. *Pacesetter*, 678
17 F.2d at 95 (judicial discretion should be guided by “determinations concerning wise judicial
18 administration, giving regard to conservation of judicial resources and comprehensive
19 disposition of litigation” (internal quotation marks omitted)).

20 United presumably filed a new lawsuit here rather than seeking leave to amend the CA
21 Lawsuit because of the stay there. The California Court is more than capable of handling
22 substantially similar claims and issues presented here. United itself alleged in California that
23 its references to Texas, Florida, and North Carolina were just examples of a national scheme
24 “**across the country.**” CA FAC, ¶¶ 57–75, 88 (Emphasis added).

25 Transfer to the California Court will best accomplish the first-to-file rule’s purpose to
26 “promot[e] efficiency.” *Kohn L. Grp., Inc.*, 787 F.3d at 1239; *Paparella*, 2023 WL 2463778,
27 at *3 (“Since the Court finds that dismissal without prejudice under the first to file rule is
28 appropriate in this case, the Court does not reach the merits of Defendant’s other arguments.”)

1 **IV. ALTERNATIVELY, UNITED’S COMPLAINT SHOULD BE DISMISSED**
2 **FOR FAILURE TO STATE A CLAIM**

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

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

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

19 Rule 9(b) requires fraud-based claims to be plead with particularity, i.e., “accompanied
20 by the who, what, when, where, and how of the misconduct charged.” *Kearns v. Ford Motor*
21 *Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (internal quotations and citations omitted). In order
22 to “allege fraud with the requisite particularity, a plaintiff must set forth more than the neutral
23 facts [such as time, place, and content] necessary to identify the transaction..., the plaintiff
24 must set forth an explanation as to why the statement or omission complained of was false or
25 misleading.” *Yourish v. California Amplifier*, 191 F.3d 983, (9th Cir. 1999).

26 In evaluating plausibility, “courts must also consider an ‘obvious alternative
27 explanation’ for defendant’s behavior,” such that [w]hen faced with two possible
28 explanations, only one of which can be true and only one of which results in liability ...,

1 [s]omething more is needed” than just facts which are consistent with both explanations, “such
2 as facts tending to exclude the possibility that the alternative explanation is true.” *Eclectic*
3 *Properties East, LLC v. Marcus & Millicap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014). The
4 only “representation” United complains of is that services of certain radiologists are billed by
5 Sonoran instead of some alternate entity. Through this, United would have the Court infer that
6 a multi-person scheme is being perpetrated by physicians, physician groups, venture
7 capitalists, Sonoran, and RP, to defraud United. Beneath United’s inflammatory language, the
8 Complaint really alleges nothing more than the ordinary business practice of certain
9 radiologists affiliating with and providing services on behalf of Sonoran. The Complaint is
10 devoid of any alleged facts that exclude the possibility that these are ordinary business
11 practices and does nothing to move United’s fraud-based accusations into the realm of
12 “plausible.” Indeed, the motivation United alleges for radiologists switching to provide
13 services on behalf of Sonoran in late 2020 is obtaining greater out-of-network reimbursement
14 through the NSA IDR process, which did not even exist then.

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

17 United’s core fraud allegation, which United incorporates by express reference into all
18 of United’s counts, is that Sonoran misrepresented that Sonoran performed the services being
19 billed when United contends the services were performed by other medical groups. Compl. ¶
20 195-196. Yet, United does not plead that any other radiology group besides Sonoran holds the
21 staffing contract at the facilities associated with Sonoran’s bills. United just insists as a
22 conclusion that Sonoran is a “sham entity,” which is not the sort of factual contention that the
23 Court must accept. *Id.* ¶ 5. Pejorative conclusory adjectives do not constitute particularity.

24 “To prove fraud in Arizona, a plaintiff must plead: ‘(1) [a] representation; (2) its falsity;
25 (3) its materiality; (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) the
26 speaker’s intent that it should be acted upon by the person and in the manner reasonably
27 contemplated; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8)
28 [the hearer’s] right to rely thereon; and (9) the hearer’s consequent and proximate injury.’” *Paz*

1 *v. Arizona*, 2016 WL 7674582, at *3 (D. Ariz. Dec. 5, 2016). The alleged facts underlying
2 these elements must satisfy FRCP Rule 8, plus Rule 9’s particularity requirement.

3 Likewise, to bring a claim of negligent misrepresentation, a Plaintiff must plead facts
4 that show that “(1) the defendant provided false information in a business transaction; (2) the
5 defendant intended for the plaintiff to rely on the incorrect information or knew that it
6 reasonably would rely; (3) the defendant failed to exercise reasonable care in obtaining or
7 communicating the information; (4) the plaintiff justifiably relied on the incorrect information;
8 and (5) resulting damage.” *SPUS8 Dakota LP v. KNR Contractors LLC*, 641 F. Supp. 3d 682,
9 696-97 (D. Ariz. 2022) (citations omitted).

10 **C. United Has Not Plausibly Pleaded Sonoran Was Not the Rendering Provider**

11 United does not identify any false representation. The only “representation” United
12 references is Sonoran being identified as the medical group that performed and billed for the
13 service. Compl. ¶ 195. United’s Complaint does not plead facts that show that this was a “false
14 representation,” such as (1) another group holding the staffing contract at the facilities
15 associated with the services billed or (2) the doctor providing services on Sonoran’s behalf
16 being unable to work for both Sonoran and others. Thus, United’s complaint does not cross
17 the line from merely possible to plausible (i.e., all the facts required to plead a cause of action).

18 The very examples of physicians referenced in United’s complaint are illustrative of
19 United’s flawed assumptions. For example, United’s allegations related to Dr. Howard Harvin
20 illustrate that physicians can be affiliated with multiple entities. United alleges that Dr. Harvin
21 had or has an affiliation with SMIL – i.e., an entity that today “provides state-of-the-art
22 diagnostic medical imaging and interventional radiology through our 17 outpatient centers”
23 through “contracted radiology Physicians”²⁰ – and therefore cannot also have an affiliation
24 with Sonoran, based on SMIL’s website, as well as Dr. Harvin’s LinkedIn profile, and a single
25 continuing education webinar. Compl. ¶¶ 125-27. United ignores that a doctor’s affiliation
26 with one group does not exclude that doctor being affiliated with other entities. Indeed, SMIL’s
27

28 ²⁰ <https://www.esmil.com/>

1 website and an updated LinkedIn cited by United for Dr. Harvin do not mention that he also
2 is a “clinical assistant professor at Stanford Health Care” – but United’s pleadings reference
3 that he works for Stanford²¹, which is in California, where United already has the pending CA
4 lawsuit. Compl. ¶ 27 (“Howard Harvin is currently working as a clinical assistant professor at
5 Stanford Health Care.”).²² As another example, United alleges that Dr. Jason Barclay-White
6 having a past affiliation with Sun City Imaging, Ltd. and still referencing Sun City Imaging
7 on his LinkedIn and state licensing profile means that a CT scan read on March 16, 2024 on
8 Sonoran’s behalf must have been actually provided by Sun City Imaging, Ltd. Compl. ¶¶ 147-
9 56. The Court need not accept these thin allegations as true, because it is judicially noticeable
10 that Sun City Imaging, Ltd. was merged out of existence one month earlier, on February 16,
11 2024. *See*, RJN, Ex. 10. (AZ Secretary of State website showing Sun Imaging Ltd. Is “inactive”
12 effective 2/16/2024, because it “merged to/with other entity.”) Thus, it certainly did could not
13 have Dr. Barclay-White acting on its behalf a month later.

14 Also judicially noticeable is that physicians can and often are affiliated with multiple
15 physician groups. A physician’s affiliations are publicly available from government sources,
16 one being the Medicare Revalidation List on the CMS website.²³ Section 6401(a) of the
17 Affordable Care Act, enacted in 2010, established a requirement for Medicare providers to
18 revalidate Medicare enrollment information on a regular basis. 42 C.F.R. § 424.515. The list
19 of the organizations with whom a physician is affiliated with and reassigned their right to bill
20 is public record at CMS.²⁴ RJN, Exs. 12-18. Dr. Harvin’s Medicare Revalidation List records
21 reflect that he has assigned his right to bill CMS to five organizations: (1) Sonoran (2) Stanford
22 Health Care, (3) Southwest Diagnostic Imaging, LLC, (4) LPCH Medical Group Div of Lucile,
23 and (5) Radiologists of Cape Cod Hospital. RJN, Ex. 23. Similarly, Dr. Barclay-White’s
24

25 ²¹ <https://careers.stanfordhealthcare.org/us/en/locations>.

26 ²² *See also* <https://stanfordhealthcare.org/doctors/h/howard-harvin.html>.

27 ²³ <https://data.cms.gov/tools/medicare-revalidation-list>.

28 ²⁴ *See* 42 C.F.R. § 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.”).

1 revalidation list identifies (1) Sonoran, (2) Associated Valley Radiologists Ltd., and (3) Banner
2 Imaging Services LLC, but not Sun City Imaging, Ltd., which no longer exists. The same is
3 true for the other example physicians referenced in United’s Complaint. *Compare* Compl. ¶¶
4 87-96, 99-108, 134-38, 143-55, *with* RJN, Exs. 24-27 (Medicare Revalidation List results for
5 Dr. Slethaug, Dr. Lai, and Dr. Diegnan all listing “affiliation with Sonoran Radiology Ltd”
6 along with other physician groups).

7 In short, United’s complaint merely alleges Sonoran billed its TIN for services rendered
8 by physicians that CMS shows to be affiliated with Sonoran under the physicians’ NPI. United
9 has not alleged that (a) Sonoran lacked the staffing contract at the hospital locations where
10 Sonoran billed, or that (b) Sonoran did not employ or contract for these physicians’ services
11 to fulfill Sonoran’s staffing rights and obligations at those hospitals. United’s conclusory fraud
12 allegations are insufficient to distinguish ordinary business conduct for radiology from
13 fraudulent activity, and thus, are insufficient under Rule 9(b). *In re Jamster Mktg. Litig.*, 2009
14 WL 1456632, at *5 (S.D. Cal. May 22, 2009) (“Without the adjectives, the allegations allege
15 conduct consistent with ordinary business conduct and an ordinary business purpose. The
16 challenge for Plaintiffs is to set forth sufficient allegations to distinguish ordinary business
17 conduct [such as doctors being affiliated with more than one group] from fraudulent conduct.
18 Pleading by adjective does not comply with Rule 9(b).”).

19 1. The industry standard billing claim form has no requirement to say that
20 the doctor might also be, or was, affiliated with another group

21 United does not properly plead any duty to give rise to a fraudulent omission. “A
22 defendant can only be liable for fraud by omission if it failed to disclose facts that it had a duty
23 to disclose.” *In re Arizona Theranos, Inc., Litig.*, 308 F. Supp. 3d 1026, 1043 (D. Ariz. 2018).
24 Likewise, a count for negligent misrepresentation requires a duty to disclose. *See Valley Pain*
25 *Centers LLC v. Aetna Life Ins. Co.*, 2023 WL 2759022, at *7 (D. Ariz. Mar. 31, 2023)
26 (affirming dismissal of negligent misrepresentation claim due to lack of allegation of fiduciary
27 relationship giving rise to duty to disclose).
28

1 United admits that Sonoran does not have a participation contract with United.²⁵ United
2 does not allege that Sonoran has any fiduciary relationship with United, or any other duty to
3 disclose on the standard claim form, that the rendering provider once belonged, or also
4 belongs, to another group. It is judicially noticeable that such information is not required on
5 the industry standard 1500 billing form, the CMS-1500, or its electronic equivalent.²⁶ The
6 billing form designed by CMS requires all other sorts of information, but not whether the
7 doctor was or is affiliated with other groups, precisely other groups are irrelevant. This further
8 shows that the dual affiliation United alleges is immaterial for billing. Moreover, United
9 admits that its own claims data readily identifies that Sonoran’s providers have or had
10 affiliations with other medical groups. Compl. ¶¶ 75-78. So, United’s conclusory alleged
11 “ignorance” of the alleged omission or falsity is belied by the allegations in its Complaint.

12 2. United Also Has Failed to Plead Fraud with *Particularity*

13 As reflected on the judicially noticeable Medicare Revalidation List, Sonoran has
14 provided radiology services through hundreds of radiologists. United has insisted that Sonoran
15 is a “sham” entity that operates only as a “façade” in a billing scheme, yet United’s Complaint
16 admits that Sonoran received an NPI from CMS, meaning the federal government recognizes
17 Sonoran as a real provider. The only “facts” pled in United’s Complaint are five (5)
18 radiologists that United identified as members of other physician groups based on private
19 websites. These allegations show nothing about the hundreds of other radiologists that contract
20 with Sonoran and ignore that doctors can be affiliated with multiple groups.

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

25
26 _____
27 ²⁵ United’s counsel also represented that their Complaint does not relate to any contracts, so
28 United cannot rely on any contractual duty for what United claims was omitted.

²⁶ Nothing in the NUCC Manual, or 1500 form, requires identifying the physician’s other
affiliations. See, RJN EX. 11, NUCC Manual.

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

3 United’s Count 6, which seeks to vacate IDR awards, fails for the reasons set forth
 4 above in Sections V.A and B, *i.e.*, United has not plausibly alleged even common law fraud,
 5 let alone the level of fraud needed under the NSA to challenge IDR awards. The NSA only
 6 provides for post-award review, and even then, it restricts judicial review to the very limited
 7 circumstances for challenging awards under the Federal Arbitration Act (“FAA”). 42 U.S.C.
 8 § 300gg-111(c)(5)(E)(i). United has not met these steep standards.

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

11 Here, United challenges the IDR decisions under Sections 10(a)(1) and 10(a)(4)²⁷ of
 12 the FAA alleging all challenged awards were procured by fraud or undue means and that the
 13 IDREs exceeded their powers. Vacatur of an arbitration award is very rarely afforded, and the
 14 review is narrow. *See United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 920 (9th Cir.
 15 2009) (noting that “permissive grounds for vacatur” are limited to “four specific
 16 circumstances,” and that courts “have strictly interpreted this standard, emphasizing that
 17 review of the award itself is both limited and highly deferential.”) See also, *Gustin v. Kleen*
 18 *Concepts LLC*, 2022 WL 17361773, at *2 (D. Ariz. Dec. 1, 2022) (“Under the FAA, courts
 19 may vacate an arbitrator’s decision ‘only in very unusual circumstances. Neither erroneous
 20 legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral
 21 award under’ the Federal Arbitration Act.”) (citations omitted). Thus, “[a]n arbitration award
 22 will fall under § 10(a) only in ‘very unusual circumstances,’ and ‘challenges . . . to NSA IDR
 23 awards may rarely succeed.’ *Med-Trans Corp.*, 700 F. Supp. 3d at 1085.

24
 25
 26 ²⁷ United relies on 9 U.S.C. § 10(a)(2) as the second basis to vacate the IDR awards (*see*
 27 *Compl.* ¶ 255), but Section 10(a)(2) only permits vacatur where “there was evident partiality
 28 or corruption in the arbitrators.” United alleged no facts to support this and appears to be
 arguing for vacatur under 9 U.S.C. § 10(a)(4) on the grounds the IDREs exceeded their powers.

1 Any non-fraud-based challenges raised in United’s Complaint fall outside the scope of
2 Section 10. For example, United alleges that Sonoran purportedly was “untimely” in initiating
3 IDR in two instances. (Compl. ¶¶ 161-63). But any such timeliness challenges had to be made
4 to the IDRE “not later than **1 business day** after the end of the 3-business-day period for
5 certified IDR entity selection,” and only the IDRE is empowered to decide them. Section 10
6 does not allow judicial review of whether submission to the IDRE was timely.

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

8 United’s arguments under Section 10(a)(1) must satisfy Rule 9(b)’s particularity
9 requirement for alleging fraud, as applied to the very narrow confines for pursuing fraud under
10 the FAA that the NSA adopted. Federal courts have confirmed that application of the FAA
11 standards to IDR challenges means “fraud or undue means” has “the same meaning” in the
12 NSA as in the FAA – nothing more. *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO,*
13 *L.L.C.*, 140 F.4th 613, 620 (5th Cir. 2025).

14 Under the FAA, “[f]raud requires a showing of bad faith during the arbitration
15 proceedings, such as bribery, undisclosed bias of an arbitrator, or willfully destroying or
16 withholding evidence.” *Id.* at 620 (citations omitted). To survive a motion to dismiss, United
17 must state the circumstances constituting this fraud with particularity. *Id.* at 622.

18 United cannot invoke fraud-based arguments to challenge arbitration awards without
19 alleging, with particularity, each of the following: (1) fraud “by clear and convincing
20 evidence,” (2) the fraud must was “not discoverable upon the exercise of due diligence prior
21 to the arbitration,” and (3) the fraud “fraud materially related to an issue in the arbitration.”
22 *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 (9th Cir. 1992).

23 Moreover, “Where fraud ... is not only discoverable, but discovered and brought to the
24 attention of the arbitrators, a disappointed party will not be given a second bite at the apple.”
25 *ABC Int’l Trades, Inc. v. Fun 4 All Corp.*, 79 F. App’x 346, 348 (9th Cir. 2003). Federal courts
26 have consistently held that one party allegedly misrepresenting facts to the arbitrator under the
27 NSA falls woefully short of alleging fraud. Instead, fraud in this context requires, “a showing
28 of bad faith during the arbitration proceedings, such as bribery, undisclosed bias of an

1 arbitrator, or willfully destroying or withholding evidence.” *Guardian Flight*, 140 F.4th at 621.

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

4 As set forth above in Section V.B, United has not plausibly alleged fraudulent conduct
5 at all, let alone with particularity. Thus, United has failed to allege sufficient facts to establish
6 fraud by clear and convincing evidence, which is sufficient grounds to dismiss United’s Count
7 6 for failure to state a claim for relief that can be granted.²⁸

8 b) United Cannot Show the Alleged Fraud Was Not “Discoverable”

9 United asserts it “only recently” uncovered the fraudulent scheme and “could not have
10 discovered the fraud prior to or during the IDR process. Compl. ¶¶ 254, 258. But United’s own
11 complaint, and the CA Lawsuit undercuts this argument.

12 First, United relies on its own claims data from early 2021 to show that billing volume
13 shifted from contracted provider groups to Sonoran. Compl. ¶ 76. This alleged shift, evident
14 in United’s own data, was available more than a year before any IDR dispute could have been
15 initiated. Moreover, by definition, United had access to its own claims data to identify the
16 alleged fact that radiologists once affiliated with a contracted provider group were now
17 identified on Sonoran claims. Also, United alleges these providers publicly identified
18 themselves as being affiliated with contracted provider groups. Compl. ¶¶ 91-95, 105-07, 125-
19 27, 135-36. United could have used all this information in the IDRE.

20 Second, if United lacked information to assess a provider’s network status, then due
21 diligence requires United to request additional information from Sonoran in the 30 days prior
22 to making an initial payment, or in the 30-day NSA open negotiation period. United did not

23 _____
24 ²⁸ The only additional allegation of misrepresentation concerns a **single** bill (out of purportedly
25 tens of thousands) where the IDRE pointed to a “prior contract” rate that was “significantly
26 higher than the QPA” paid and offered by United. Compl. ¶¶ 175-82. The alleged
27 misrepresentation was not pled with particularity, let alone that Sonoran made any specific
28 representation of a contract. The Complaint does not indicate what, if anything, was submitted
by Sonoran to the IDRE, what “contract” the IDRE was referencing, when, or in what form.
Indeed, maybe United told the IDRE there was another applicable contract – just as United
alleges in its lawsuits that contracts with other groups apply.

1 do so. Instead, United voluntarily paid as out-of-network for a year, participated in the IDR
2 process for more than three years, and only cried “fraud” more than four years after Sonoran
3 began operations – when United grew dissatisfied with its IDR results.

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

7 3. United has not met the “high standard” for Section 10(a)(4) vacatur

8 United argues that the IDREs overseen by CMS exceeded their powers by hearing
9 ineligible disputes. But FAA § 10(a)(4) is a “high standard for vacatur” that affords courts
10 only an “extremely limited review authority” warranted when an arbitration award exhibits a
11 manifest disregard of law or is completely irrational. *HayDay Farms, Inc. v. FeeDx Holdings,*
12 *Inc.*, 55 F.4th 1232, 1240–41 (9th Cir. 2022). “Manifest disregard ... requires something
13 beyond and different from a mere error in the law or failure on the part of the arbitrators to
14 understand and apply the law. To demonstrate manifest disregard, the moving party must show
15 that the arbitrator understood and correctly stated the law, but proceeded to disregard the
16 same.” *Id.* (citations omitted). The court must accept the arbitrator’s findings, and “[t]here
17 must be some evidence in the record, other than the result, that the arbitrators were aware of
18 the law and intentionally disregarded it.” *Id.* “An arbitrator does not exceed its authority if the
19 decision is a plausible interpretation of the arbitration contract.” *U.S. Life Ins. Co. v. Superior*
20 *Nat. Ins. Co.*, 591 F.3d 1167, 1177 (9th Cir. 2010).

21 United cannot satisfy this high bar. United does not allege that the IDREs were
22 presented with United’s basis for its eligibility challenges, but even if United did ever
23 challenge the eligibility, “[i]t is not enough ... to show that the panel committed an error—or
24 even a serious error.” *Stolt–Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 130 S. Ct. 1758, 1767
25 (2010). Moreover, this theory relies on the same allegations as United’s defective 10(a)(1)
26 argument, and fails for the same reasons discussed above.

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

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

5 1. Count 3: Civil Conspiracy:

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

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

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

20 A count for Money Had and Received is an equitable count that requires pleading that
21 “the defendant has received or obtained possession of money of the plaintiff which in equity
22 and good conscience he ought to pay over to the plaintiff.” *Copper Belle Mining Co. of W.*
23 *Virginia v. Gleeson*, 14 Ariz. 548, 551, 134 P. 285 (1913). The general rule is that “a party
24 cannot recover money voluntarily paid with a full knowledge of the facts.” *Id.* at 554. The
25 action is akin to an action for unjust enrichment. *Dream Team*, 2017 WL 3460806, at *3. “To
26 prevail on an unjust enrichment claim, a plaintiff must allege: “(1) an enrichment; (2) an
27 impoverishment; (3) a connection between the enrichment and the impoverishment; (4)
28 absence of justification for the enrichment and the impoverishment; and (5) an absence of a

1 remedy provided by law.” *Perez v. First Am. Title Ins. Co.*, 810 F. Supp. 2d 986, 991 (D. Ariz.
2 2011) (quoting *Freeman v. Sorchych*, 226 Ariz. 242, 245, 245 P.3d 927 (Ct. App. 2011)).

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

9 3. Counts 7, 8, 10, 11: Violation and Conspiracy to Violate State and
10 Federal RICO Statutes²⁹

11 To state a plausible RICO claim, United must allege that the Defendants “participate[d]
12 in (1) the conduct of (2) an enterprise that affects interstate commerce (3) through a pattern (4)
13 of racketeering activity.” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990,
14 997 (9th Cir. 2014) (citing 18 U.S.C. § 1962(c)). The pleadings must demonstrate the
15 “enterprise,” under element two, “has (A) a common purpose, (B) a structure or organization,
16 and (C) longevity necessary to accomplish the purpose.” *Id.* (citation omitted).” *Valley Pain*
17 *Centers LLC v. United Life Ins. Co.*, 2023 WL 2759022, at *8 (D. Ariz. Mar. 31, 2023).

18 Conspiracy based in fraud must also be plead with particularity under Rule 9(b)
19 standards. *Id.*; see also, *Chagby v. Target Corp.*, 358 F. App’x 805 (9th Cir. 2009) (affirming
20 dismissal of fraud-based RICO because the allegations were insufficient to “create an obvious
21 inference of fraud,” and failed to meet 9(b) pleading standards).

22 The only predicate act of racketeering activity alleged by United for its federal RICO
23 count is “the use of wires and mails to submit fraudulent claims to United.” Compl. ¶ 293.
24 Likewise, the only alleged racketeering activity alleged by United under A.R.S. § 13-
25 2301(D)(4) are the same defective allegations of a “scheme or artifice to defraud,” or “multiple
26

27 ²⁹ Arizona courts have interpreted the state law version of RICO “to mirror the
28 federal RICO statute.” *Aviva USA Corp. v. Vazirani*, 632 F. App’x 885, 889 (9th Cir. 2015).
The Arizona and Federal RICO claims should be dismissed for the same reasons.

1 acts of fraud” under the same theory advanced in its fraud count, the alleged misrepresentation
2 “that Sonoran performed services actually rendered by other medical groups” Compl. ¶ 266.
3 Thus, United’s RICO counts fail because United has not stated a plausible claim for fraud, let
4 alone with any particularity.

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

16 Here, the allegations in United’s complaint are nothing more than United taking issue
17 with RP and Sonoran’s ordinary organizational relationships and business activities amongst
18 themselves. *See also, Gomez v. Guthy-Renker, LLC*, 2015 WL 4270042, at *9 (C.D. Cal. July
19 13, 2015) (noting the “widespread consensus among courts” that routine business relationships
20 are insufficient to impose RICO liability); *In re Countrywide Fin. Corp. Mortgage-Backed*
21 *Sec. Litig.*, 2012 WL 10731957, at *8 (C.D. Cal. June 29, 2012) (“Parties that enter commercial
22 relationships for their own gain or benefit do not constitute an enterprise.”) (internal quotations
23 omitted). United failed to allege the requisite separate “enterprise,” and indeed, admits RP and
24 Sonoran are affiliates. Thus, even if there had been a properly alleged fraud here – and there
25 isn’t – United cannot elevate it into RICO.

26 Counts 8 and 11 for RICO Conspiracy also necessarily fail. “Plaintiffs cannot claim
27 that a conspiracy to violate RICO existed if they do not adequately plead a substantive
28 violation of RICO.” *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 559 (9th Cir. 2010) (quoting

1 *Howard v. Am. Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000).

2 4. Count 9: Aiding and Abetting a Tort

3 A claim for aiding and abetting a tort “requires proof of three elements: (1) the primary
4 tortfeasor must commit a **tort** that causes injury to the plaintiff; (2) the defendant must know
5 that the primary tortfeasor's conduct constitutes a breach of duty; and (3) the defendant must
6 substantially assist or encourage the primary tortfeasor in the achievement of the breach.”
7 *Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Loc. No. 395 Pension*
8 *Tr. Fund*, 201 Ariz. 474, 485 (2002). Aiding and abetting requires that “the defendants must
9 know that the conduct they are aiding and abetting is a tort.” *Id.* “There must be some
10 distinction between the primary tort and the aiding and abetting conduct. Aiding and abetting
11 is derivative in the sense that absent a predicate primary tort, there can be no claim for aiding
12 and abetting which is a secondary form of liability.” *Aguado v. XL Ins. Am.*, 721 F. Supp. 3d
13 811, 816 (D. Ariz. 2024).

14 The only alleged “tort” under this count are the derivative alleged “commission of torts
15 against United, as set forth herein.” Compl. ¶ 277. United’s Count 9 fails because the other
16 asserted torts on which this count depends fail. Further, United makes no effort to describe any
17 conduct that is distinct from the primary tort that would constitute aiding and abetting.

18 5. Count 12: Declaratory Relief

19 United’s declaratory relief count seeks nothing more than affirmation that it prevails on
20 its other counts. As discussed herein, United cannot circumvent the NSA and the relief United
21 seeks is superfluous to its other counts. Moreover, the Declaratory Judgment Act does not
22 provide an independent cause of action. *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878–79 (9th
23 Cir. 2022); *see also Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011) (“[T]he plaintiffs have
24 not alleged a cognizable cause of action and therefore have no basis upon which to seek
25 declaratory relief. Nor does the Declaratory Judgment Act ... provide a cause of action.”). Here,
26 a declaratory judgment cannot stand without the other causes of action which fail for the
27 reasons articulated above. Declaratory judgment will serve no useful purpose here, and nothing
28 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.

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Respectfully submitted,
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