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24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF ARIZONA**
26 **PHOENIX DIVISION**

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

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
TRANSFER, STAY, OR DISMISS**

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
INTRODUCTION	1
BACKGROUND	3
I. United’s Claims in this Case.....	3
A. The No Surprise Act and its Independent Dispute Resolution Process.....	3
B. Radiology Partners Acquires Radiology Groups Across Arizona that Each Have their Own Network Agreement with United.	4
C. Radiology Partners Creates Sonoran, and Begins Submitting Out-of- Network Claims to United Through Sonoran for Services Rendered by In- Network Providers.	5
D. Defendants Initiate Tens of Thousands of NSA IDRs for Services Rendered by In-Network Providers.	5
II. The California Action	6
ARGUMENT	7
I. Defendants’ Request for a Transfer, Dismissal, or Stay under the First-to-File Rule should be Denied.....	7
A. Defendants’ Requested Relief is Inappropriate because the California Lawsuit has been Stayed Indefinitely Pending Arbitrations.....	8
B. The California Lawsuit Involves Different Issues.....	9
C. The Parties to the California Matter are Different.....	10
D. Equity Precludes Application of the First-to-Rule Apply Here.....	11
II. Defendants’ Motion to Dismiss Should be Denied in its Entirety.....	12
A. The Complaint Contains Well-Pleaded Factual Allegations to Support United’s Claims for Fraud and Negligent Misrepresentation.....	13
B. United States a Claim for Vacatur Based on Sonoran’s Fraud During the NSA IDR Process and Because the Arbitrators Exceeded their Powers.	17
C. United States a Claim for Civil Conspiracy.....	21
D. United Adequately Alleges Claims for Money Had and Received and Unjust Enrichment.	22
E. United Alleges State and Federal RICO Claims.....	22
F. United Adequately Pleads Aiding and Abetting.....	24
G. United Properly States a Claim for Declaratory Judgment.....	26
CONCLUSION.....	26

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

A.G. Edwards & Sons, Inc. v. McCollough,
967 F.2d 1401 (9th Cir. 1992)17

Adoma v. Univ. of Phoenix, Inc.,
711 F. Supp. 2d 1142 (E.D. Cal. 2010).....11

Aguado v. XL Ins. Am.,
721 F. Supp. 3d 811 (D. Ariz. 2024)25

Alltrade, Inc. v. Uniweld Products, Inc.,
946 F.2d 622 (9th Cir. 1991)8

Arnold & Assocs., Inc. v. Misys Healthcare Sys.,
275 F. Supp. 2d 1013 (D. Ariz. 2003)26

Ashcroft v. Iqbal,
556 U.S. 662 (2009).....12

Aspic Eng’g & Constr. Co. v. ECC Centcom Constructors LLC,
913 F.3d 1162 (9th Cir. 2019)21

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007).....12

Best W. Intern., Inc. v. Mahroom,
No. 07-cv-827-PHX-JAT, 2007 WL 1302749 (D. Ariz. May 3, 2007)11

Bias v. Wells Fargo & Co.,
942 F. Supp. 2d 915 (N.D. Cal. 2013)24

Biltform Architecture Group, Inc. v. Inv. Dev. Mgmt., LLC,
No. 23-CV-00297-PHX-SMB, 2023 WL 12140369 (D. Ariz. Oct. 27, 2023).....12

Caremark LLC v. Chickasaw Nation,
No. CV-21-00574-PHX-SPL, 2021 WL 2780859 (D. Ariz. July 2, 2021),
aff’d, 43 F.4th 1021 (9th Cir. 2022).....7, 8, 9, 11

Club Vista Fin. Services, LLC v. Maslon Edelman Borman & Brand, LLP,
10-cv-0412-PHX-GMS, 2010 WL 2231926 (D. Ariz. June 2, 2010).....9, 10

Comedy Club, Inc. v. Improv West Assocs.,
553 F.3d 1277 (9th Cir. 2009)20

1 *Cooper v. Pickett*,
 2 137 F.3d 616 (9th Cir. 1997)15

3 *Cousins v. Lockyer*,
 4 568 F.3d 1063 (9th Cir. 2009)12

5 *Dawson v. Withycombe*,
 6 163 P.3d 1034 (Ariz. Ct. App. 2007).....22

7 *Eclectic Props. E., LLC v. Marcus & Millichap Co.*,
 8 751 F.3d 990 (9th Cir. 2014)23

9 *Guardian Flight, LLC v. Aetna Health Inc.*,
 10 711 F. Supp. 3d 662 (S.D. Tex. 2024)20

11 *Guardian Flights, L.L.C. v. Health Care Serv. Corp.*,
 12 140 F.4th 271 (5th Cir. 2025)17

13 *Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.*,
 14 179 F.R.D. 264 (C.D. Cal. 1998).....11

15 *In re Arizona Theranos, Inc., Litig.*,
 16 308 F. Supp. 3d 1026 (D. Ariz. 2018)23

17 *In re Arizona Theranos, Inc. Litigation*,
 18 308 F. Supp. 3d at 1058–5925

19 *In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*,
 20 No. 2:11-cv-07166, 2012 WL 10731957 (C.D. Cal. June 29, 2012).....24

21 *In re Duramax Diesel Litig.*,
 22 298 F. Supp. 3d 1037 (E.D. Mich. 2018).....23, 24

23 *In re Toyota Corp. Unintended Acceleration Mktg., Sales Pracs., & Prods. Liab.*
 24 *Litig.*,
 25 826 F. Supp. 2d 1180 (C.D. Cal. 2011)22

26 *Inherent.com v. Martindale-Hubbell*,
 27 420 F. Supp. 2d 1093 (N.D. Cal. 2006)11

28 *Kubli v. AmTrust Ins. Co. of Kansas*,
 No. 18-cv-02053, 2019 WL 13196105 (D. Ariz. Oct. 30, 2019).....25

Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.,
 341 F.3d 987 (9th Cir. 2003)21

Lagstein v. Certain Underwriters at Lloyd’s, London,
 607 F.3d 634 (9th Cir. 2010)20

1 *Lifeflite Med. Air Transp., Inc. v. Native Am. Air Servs., Inc.*,
 2 7 P.3d 158 (Ariz. Ct. App. 2000).....23

3 *Lopez v. Bellingham Marine Indus., Inc.*,
 4 No. 25-CV-00518-DAD-JDP, 2025 WL 2710458 (E.D. Cal. Sept. 23, 2025).....7, 8

5 *Luna v. Marvell Tech. Grp. Ltd.*,
 6 No. 15-CV-05447, 2016 WL 5930655 (N.D. Cal. Oct. 12, 2016)15

7 *Mycone Dental Supply Co. v. Creative Nail Design, Inc.*,
 8 No. CIV.A. 11-4380 JBS, 2012 WL 3599368 (D.N.J. Aug. 17, 2012).....16

9 *Neurological Surgery Practice of Long Island, PLLC v. United States Dep't of
 Health & Human Services*,
 10 682 F. Supp. 3d 249 (E.D.N.Y. 2023)4

11 *Pena v. Experian Info. Sols., Inc.*,
 12 No. 8:22-cv-01115-SSS-ADSX, 2023 WL 6787809 (C.D. Cal. Sept. 22, 2023).....8

13 *Ruckus Wireless, Inc. v. Harris Corp.*,
 14 No. 11-cv-01944-LHK, 2012 WL 588792 (N.D. Cal. Feb. 22, 2012)7

15 *Schwartz v. Frito-Lay N. Am.*,
 16 No. C-12-02740-EDL, 2012 WL 8147135 (N.D. Cal. Sept. 12, 2012).....8

17 *Shaw v. Nissan N. Am., Inc.*,
 18 220 F. Supp. 3d 1046 (C.D. Cal. 2016)23

19 *Sporn v. TransUnion Interactive, Inc.*,
 20 No. 18-cv-05424-YGR, 2019 WL 151575 (N.D. Cal. Jan. 10, 2019).....11

21 *SPUS8 Dakota LP v. KNR Contractors LLC*,
 22 641 F. Supp. 3d 682 (D. Ariz. 2022)13

23 *Steen v. Am. Nat'l Ins. Co.*,
 24 609 F. Supp. 3d 1066 (C.D. Cal. 2022)26

25 *Tyler v. Hennepin Cnty.*,
 26 598 U.S. 631 (2023).....16

27 *United HealthCare Servs., Inc. v. Radiology Partners, Inc.*,
 28 Case No. 2:23-cv-02825-MWF-AFM (C.D. Cal.)..... *passim*

United States v. Corinthian Colleges,
 655 F.3d 984 (9th Cir. 2011)16

UnitedHealthcare of Texas, Inc. et al. v. Radiology Partners,
 No. 23-cv-02825, D.E. 69 (Aug. 18, 2023)6, 7

1 *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395*
 2 *Pension Tr. Fund,*
 3 38 P.3d 12 (Ariz. 2002).....21, 24

4 *Young v. Trump,*
 5 506 F. Supp. 3d 921 (N.D. Cal. 2020)12

6 **Statutes**

7 9 U.S.C.
 8 § 10(a)17
 9 § 10(a)(1)17, 21
 10 § 10(a) (1)-(4)17
 11 § 10(a)(4)17, 20, 21

12 18 U.S.C. §§ 1961-196822, 23

13 42 U.S.C.
 14 § 300gg-111(a)(3)(G)(i).....20
 15 § 300gg-111(c).....3
 16 § 300gg-111(c)(1)(A).....3, 20
 17 §§ 300gg-111(c)(5)(B) and 300gg-111(c)(5)(C)(ii)3
 18 § 300gg-111(c)(5)(E)(i)(II).....17

19 P.L. 116-260..... *passim*

20 Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758-2890 (2020)3

21 **Rules**

22 Fed. R. Civ. P.
 23 8(d).....26
 24 9.....2, 12, 16
 25 9(b).....16
 26 12.....2
 27 12(b)(6)12
 28 57.....26

INTRODUCTION

1
2 The Federal No Surprises Act (“NSA”) was enacted in 2022 and established a
3 process—called Independent Dispute Resolution (“IDR”)—for determining
4 reimbursement rates for service performed by *out-of-network* medical providers. This
5 lawsuit is about Defendants Radiology Partners, Inc. (“Radiology Partners”) and Sonoran
6 Radiology, Ltd.’s (“Sonoran”) (collectively, “Defendants”) abuse of the NSA IDR process
7 whereby Defendants intentionally and improperly initiated disputes for services rendered
8 by *in-network* providers as if an out-of-network provider had rendered those services.
9 Defendants engaged in this fraud because they performed financial modeling showing
10 they could obtain *millions of dollars more per year* by submitting claims out-of-network
11 and into the NSA IDR process than by billing under the terms of the applicable providers’
12 existing in-network contracts with United.

13 The scheme started when Radiology Partners acquired medical groups across
14 Arizona, each of which had its own in-network contract with United that reimbursed
15 services at specified rates. But, after realizing that it could make more money by billing
16 services performed by these contracted groups as out-of-network, Radiology Partners
17 created a sham medical group, Defendant Sonoran Radiology, Ltd. (“Sonoran”), which
18 did not have a contract with United, and funneled all of the services performed by its other
19 Arizona medical groups through Sonoran. Importantly, Sonoran does not provide any of
20 the services it bills—Sonoran merely bills United for services performed by the other
21 Radiology Partners-affiliated groups in Arizona.

22 Defendants then falsely certified to United, entities overseeing the IDR process, and
23 the U.S. Department of Health & Human Services that the services were provided by
24 Sonoran as an out-of-network provider so they could initiate tens of thousands of improper
25 NSA IDRs. This caused United and its self-funded employer plan sponsors to incur tens
26 of millions of dollars in fraudulent claims, NSA IDR awards, and NSA IDR fees.
27 Defendants’ actions dramatically increased the cost of healthcare in Arizona for the same
28

1 services, being provided to the same patients, by the same medical professionals, at the
2 same facilities.

3 United brought this suit to recover damages from Defendants and to stop Defendants
4 from continuing their improper and illegal billing practices. In response, Defendants filed
5 the present motion. D.E. 26.

6 In an attempt to avoid (or delay) facing liability for their fraud, Defendants first
7 request that the Court to “transfer, stay, or dismiss” this action under the first-to-file rule.
8 But the first-filed rule cannot apply here because there is no other active case pending.
9 The allegedly first-filed action in the Central District of California has been stayed
10 indefinitely since 2023, pending arbitrations in Florida and North Carolina and is
11 administratively closed. As a result, there is no efficiency to be gained by transferring this
12 case to the Central District of California, nor any risk of inconsistent outcomes. This alone
13 is fatal to Defendants’ request. Further, the purported first-filed case involved
14 fundamentally different issues (improper in-network billing as opposed to an out-of-
15 network scheme) and different parties (medical groups in Texas, Florida, and North
16 Carolina as opposed to Arizona). No part of the California lawsuit has ever, or will ever,
17 involve the NSA; out-of-network billing; Radiology Partners’ conduct in Arizona; or
18 Sonoran and the other Arizona-based medical groups pertinent to the present matter.
19 Without any chance of inconsistent rulings or judgments, Defendants’ arguments under
20 the first-to-file rule fail.

21 Defendants also ask the Court to dismiss United’s complaint in its entirety under
22 Rules 9 and 12. Those arguments also fail because United’s Complaint details Defendants’
23 fraud in extraordinary detail. It includes numerous examples of specific physicians for
24 which Sonoran billed claims out-of-network even though those very same physicians
25 affirmatively represented to the Arizona Medical Board that they were affiliated with a
26 different medical group, not Sonoran. Rather than actually addressing the sufficiency of
27 United’s allegations as required at this stage, Defendants devote nearly 15 pages disputing
28 the well-pleaded factual allegations in the Complaint and citing irrelevant information

1 outside the four corners of the Complaint. That Defendants’ briefing reads more like a
2 motion for summary judgment only underscores how little their arguments find support in
3 the pleadings.

4 For the reasons set forth herein, United respectfully requests that the Court deny
5 Defendants’ motion to transfer, stay, or dismiss in its entirety.

6 **BACKGROUND**

7 **I. United’s Claims in this Case.**

8 **A. The No Surprise Act and its Independent Dispute Resolution Process.**

9 This case is about Defendants’ fraudulent pass-through billing and related abuse of
10 the No Surprise Act (“NSA”). D.E. 1 (“Compl.”) ¶¶ 1–2. Prior to the NSA, patients could
11 get surprise “balance bills” from providers when they unwittingly received care from an
12 out-of-network healthcare provider. *Id.* ¶¶ 24–26. These balance bills often had no relation
13 to the actual cost of care or market rates and posed a significant hardship for patients. *Id.*
14 ¶¶ 25. To protect patients from these billing practices, Congress enacted the NSA in 2020
15 to end “surprise medical bills.” *Id.* ¶ 27 (citing Pub. L. No. 116-260, div. BB, tit. I, 134
16 Stat. 1182, 2758–2890 (2020)).

17 The NSA also created the IDR process for resolving payment disputes on claims
18 between out-of-network providers and health benefit plans. Compl. ¶ 28 (citing 42 U.S.C.
19 § 300gg-111(c)). Importantly, the IDR process is only available to out-of-network
20 providers, defined in the NSA as a “nonparticipating provider.” Compl. ¶¶ 29–31 (citing
21 42 U.S.C. § 300gg-111(c)(1)(A)). A provider must attest that they meet this criteria to the
22 health benefit plan, the U.S. Department of Health & Human Services, and a neutral third
23 party (referred to as an “IDR Entity”) that oversees the IDR process multiple times before
24 an IDR process can be initiated. Compl. ¶¶ 32–34.

25 The IDR process is a “baseball-style” type of dispute resolution—the provider and
26 health benefits plan each submit a proposed reimbursement amount and explanation to the
27 arbitrator, and the IDR Entity then selects one of the two proposed amounts taking into
28 account various criteria. Compl. ¶¶ 35–36 (citing 42 U.S.C. §§ 300gg-111(c)(5)(B) and

1 300gg-111(c)(5)(C)(ii)). One of these criteria is the Qualifying Payment Amount
2 (“QPA”), a calculation that represents the median in-network rate for a given service
3 rendered by the same or similar provider in a given region.¹ Compl. ¶ 37.

4 Congress expected that most items and services submitted to the IDR process would
5 be paid at or around the QPA. *Id.* ¶ 38. That has not proven to be the case—the median
6 awarded rate in the IDR process is now more than *four times greater* than the QPA. *Id.* at
7 ¶ 42. Health benefit plans are also forced to pay costly administrative fees as part of the
8 IDR process that are often more expensive than the underlying medical services. *Id.* ¶ 10.
9 These results have provided an incentive for a handful of providers—often backed by
10 private-equity firms—to abuse the NSA process. *Id.* ¶¶ 42–49.

11 **B. Radiology Partners Acquires Radiology Groups Across Arizona that**
12 **Each Have their Own Network Agreement with United.**

13 Radiology Partners is an aggregator of radiology practices founded in 2012 that
14 carries out its operations through local groups that it acquires and controls. *Id.* ¶¶ 50–51;
15 57. Radiology Partners today claims \$3 billion in annual revenue, employs more than
16 4,000 radiologists at 3,400 sites in all 50 states, and handles more than 10% of the
17 country’s imaging volume. *Id.* ¶¶ 51. Radiology Partners’ rapid growth has been achieved
18 by acquiring radiology groups across the country using the billions of dollars its private-
19 equity backers have invested in Radiology Partners. *Id.* ¶¶ 53–56.

20 Radiology Partners has achieved a sizeable market share in Arizona through
21 acquisitions of radiology groups including Southwest Diagnostic Imaging d/b/a SMIL
22 Southwest Medical Imaging (“SMIL”), Sun City Imaging Ltd., Associated Valley
23 Radiologists, Arizona Professional Radiology Services, PLLC, and EVAC LLC. *Id.* ¶¶
24 58–61. Each of these radiology groups had a contract with United at the time they were
25 acquired by Radiology Partners, making them “in-network” with United. *Id.* ¶ 64. Those
26

27
28 ¹ See *Neurological Surgery Practice of Long Island, PLLC v. United States Dep't of Health & Human Services*, 682 F. Supp. 3d 249, 261 (E.D.N.Y. 2023) (“The QPA is essentially the median rate that the health plan would have paid for in-coverage services in that geographic area.”).

1 contracts include, among other things, agreed upon reimbursement rates for medical
2 services provided to United’s members. *Id.*

3 **C. Radiology Partners Creates Sonoran, and Begins Submitting Out-of-**
4 **Network Claims to United Through Sonoran for Services Rendered by**
5 **In-Network Providers.**

6 Radiology Partners was apparently dissatisfied with the reimbursement rates the
7 groups it acquired in Arizona had negotiated with United—believing that it could receive
8 higher reimbursement rates if the services performed by those contracted groups were
9 instead billed out-of-network. So, Radiology Partners devised a scheme to illegally bill
10 those medical groups’ claims out-of-network. *Id.* ¶ 65. First, Radiology Partners—through
11 its co-Founder and CEO, Rich Whitney—created a new entity, Sonoran, and registered it
12 for a Tax Identification Number (“TIN”), a unique number that health benefit plans use in
13 paying claims. *Id.* ¶¶ 66–69.

14 Radiology Partners then began billing all of its Arizona-based medical groups under
15 Sonoran’s name and TIN. *Id.* ¶ 71. The non-Sonoran medical groups, and their physicians,
16 however, continued to provide the same care, to the same patients, in the same locations—
17 all while maintaining their in-network agreements with United. *Id.* ¶ 74. The only
18 difference was that, instead of being reimbursed at contractually agreed upon rates, the
19 services were processed as out-of-network, which often resulted in higher reimbursements
20 because they were billed using Sonoran’s name and TIN. *Id.* ¶¶ 74–77.

21 **D. Defendants Initiate Tens of Thousands of NSA IDRs for Services**
22 **Rendered by In-Network Providers.**

23 Still wanting more, Defendants went even further and initiated disputes in the NSA
24 IDR process for more than 78,000 services that were billed to United by Sonoran. *Id.* ¶¶
25 115; 122. But each of those services were performed by network providers and, thus,
26 ineligible for the NSA. *Id.* ¶ 117. So, in order to illegally get the benefit of the NSA IDR
27 process, Radiology Partners and Sonoran falsely attested to the U.S. Department of Health
28 & Human Services, the IDREs, and United that the services were, in fact, eligible for the

1 IDR process when, in fact, Defendants knew they were not. *Id.* ¶ 117. Defendants also
2 made misrepresentations to the IDREs about the prior “contracted rate” between Sonoran
3 and United—despite Sonoran *never* having had a network agreement with United *Id.* ¶¶
4 175–82. As a result of these misrepresentations, the IDR entities issued tens of millions
5 of dollars’ worth of awards against United for ineligible services. *See, e.g., id.* ¶¶ 123–55.
6 Worse yet, as Sonoran continued to win awards in its favor on ineligible claims, Sonoran
7 began to increase its billed charges and offers in the IDR Process—in excess of 1,100%
8 the rates of Medicare—to obtain even higher awards related to these ineligible services.
9 *Id.* ¶¶ 118–21. The end result has been an increase in costs for radiology services across
10 the state of Arizona. *Id.* ¶ 185.

11 **II. The California Action.**

12 United separately sued Radiology Partners on April 14, 2023 in a matter captioned,
13 *United HealthCare Servs., Inc. v. Radiology Partners, Inc.*, Case No. 2:23-cv-02825-
14 MWF-AFM (C.D. Cal.) (the “California Matter”). That case relates to a scheme in which
15 Radiology Partners to billed claims for services rendered by its affiliated medical groups
16 in a given state under the name and TIN of the medical group with the highest contracted
17 reimbursement rates in that state. D.E. 24, Ex. 2 ¶¶ 3–21; 56. United’s claims in that case
18 specifically—and only—relate to Radiology Partner’s behavior in Texas, North Carolina,
19 and Florida. *Id.* ¶¶ 89; 129. The California Action does not relate to conduct in Arizona or
20 out-of-network billing, which are the only issues in the present case. *See id.*

21 Radiology Partners successfully compelled arbitration of United’s claims in the
22 California Matter. Radiology Partners’ motion to compel arbitration was premised entirely
23 on the fact that “United’s claims arise from, relate to, and are inextricably interwoven with
24 the Participation Agreements”[between United and Radiology Partners’ groups in Texas,
25 North Carolina, and Florida]” and “United reimbursed the Practices for radiology services
26 pursuant to these contracts.” *UnitedHealthcare of Texas, Inc. et al. v. Radiology Partners*,
27 No. 23-cv-02825, D.E. 69 at 1 (Aug. 18, 2023). Radiology Partners further alleged the
28 “core of United’s allegations” was “submitting bills for radiology services pursuant to the

1 Participation Agreements with United and its wholly owned subsidiaries.” *Id.* at p. 16
2 emphasis added.

3 Because the Court believed “it is impossible to understand why the alleged fraud is
4 indeed a ‘lie’...without understanding the relationship between the parties as set forth in
5 the Participation Agreements[,]” the Court compelled arbitration of United’s claims on
6 September 27, 2023. D.E. 24, Ex. 3 at 8. Since that time, the California Matter has been
7 indefinitely stayed “pending completion of the arbitration[s].” *Id.* at 9. The arbitration in
8 Texas has been completed, and the arbitrations in North Carolina and Florida are
9 underway. D.E. 24, Exs. 5 & 6.

10 The California Matter has never progressed—United filed its claims, Radiology
11 Partners’ moved to compel arbitration, arbitration was compelled, and the parties have
12 filed periodic updates on the status of those arbitrations. That’s it. There has never been
13 any ruling on the pleadings, entry of an ESI stipulation or protective order, exchange of
14 discovery, or other proceedings. Nor will there ever be any discovery or any decision by
15 that court on the merits of the case. Following completion of the arbitrations in North
16 Carolina and Florida, the California Matter will be dismissed.

17 ARGUMENT

18 **I. Defendants’ Request for a Transfer, Dismissal, or Stay under the First-to-File** 19 **Rule should be Denied.**

20 Defendants first ask the Court to “transfer, stay, and/or dismiss the action” under
21 the first-to-file rule based on the California Matter. D.E. 26 at 12–15. The first-to-file rule
22 is “meant to alleviate the burden placed on the federal judiciary by duplicative litigation
23 and to prevent the possibility of conflicting judgments.” *Caremark LLC v. Chickasaw*
24 *Nation*, No. CV-21-00574-PHX-SPL, 2021 WL 2780859, at *2 (D. Ariz. July 2, 2021),
25 *aff’d*, 43 F.4th 1021 (9th Cir. 2022). “This rule promotes judicial efficiency and prevents
26 the risk of inconsistent decisions that would arise from multiple litigations of identical
27 claims.” *Lopez v. Bellingham Marine Indus., Inc.*, No. 25-CV-00518-DAD-JDP, 2025 WL
28 2710458, at *3 (E.D. Cal. Sept. 23, 2025) (citing *Ruckus Wireless, Inc. v. Harris Corp.*,

1 No. 11-cv-01944-LHK, 2012 WL 588792, at *2 (N.D. Cal. Feb. 22, 2012)). “Courts
2 analyze three factors in determining whether to apply the first-to-file rule: (1) chronology
3 of the actions; (2) similarity of the parties; and (3) similarity of the issues.” *Caremark*
4 *LLC*, 2021 WL 2780859, at *2 (citing *Schwartz v. Frito–Lay N. Am.*, No. C-12-02740-
5 EDL, 2012 WL 8147135, at *2 (N.D. Cal. Sept. 12, 2012)). “However, the most basic
6 aspect of the first-to-file rule is that it is discretionary, and a court may decide not to apply
7 it based on “reasons of equity.”” *Caremark LLC*, 2021 WL 2780859, at *2 (quoting
8 *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 628 (9th Cir. 1991)).

9 On these facts, Defendants’ attempt to invoke the first-to-file rule fails as a matter of law
10 because: (A) the California Matter has been stayed indefinitely pending a series of
11 arbitrations; (B) the California Matter involved issues related to improper in-network, as
12 opposed to out-of-network, billing; and (C) the California Matter is unrelated to Radiology
13 Partners’ and Sonoran’s conduct in Arizona.

14 **A. Defendants’ Requested Relief is Inappropriate because the California**
15 **Lawsuit has been Stayed Indefinitely Pending Arbitrations.**

16 The Court need not reach the merits of Defendants’ first-to-file argument because
17 the California Matter is stayed indefinitely pending arbitrations. “[D]istrict courts in this
18 circuit have declined to stay or dismiss an action pursuant to the first-to-file rule when the
19 first-filed action has been stayed pending arbitration.” *Lopez v. Bellingham Marine Indus.,*
20 *Inc.*, No. 25-CV-00518-DAD-JDP, 2025 WL 2710458, at *13 (E.D. Cal. Sept. 23, 2025).
21 *See also Pena v. Experian Info. Sols., Inc.*, No. 8:22-cv-01115-SSS-ADSX, 2023 WL
22 6787809, at *3 (C.D. Cal. Sept. 22, 2023) (a case being “indefinitely stayed pending
23 arbitration is among the most ‘significant considerations’” towards finding the first-to-
24 rule inapplicable). This is true “[e]ven if the Court were to find the three threshold factors
25 satisfied” because such relief is “inconsistent with the principles animating the first-to-file
26 rule and further precluded by important equitable considerations.” *Id.*

27 This precedent should be followed here, too. The purpose of the first-to-file rule is to
28 promote efficiency and fairness and to prevent inconsistent rulings. *See Lopez*, 2025 WL

1 2710458, at *3. Because the California Matter has been stayed indefinitely, application of
2 the rule here undermines rather than advances its core purposes. Indeed, there is no
3 duplication of efforts that can take place with another action where that other action is
4 stayed indefinitely. Likewise, because the California Matter has been stayed indefinitely
5 pending arbitration, there is no risk of inconsistent judgements. The California Matter has
6 never and will never reach the merits of any issue before this Court for several reasons, not
7 the least of which is that an arbitration result related to contracts and conduct in Florida and North
8 Carolina can have no bearing on the claims here which relate to conduct in Arizona and for which
9 there are no contracts at issue. Because the California action is stayed and administratively closed,
10 application of the first-to-file rule in this case would deny United any avenue for relief from
11 Radiology Partners’ and Sonoran’s abuse of the NSA and fraudulent out-of-network scheme.

12 **B. The California Lawsuit Involves Different Issues.**

13 The first-to-file rule is also inapplicable because the California Matter involves
14 different issues than those in this action and there is not—and will never be—risk of
15 “duplicative litigation” or “conflicting judgments.” *Caremark LLC*, 2021 WL 2780859,
16 at *2.

17 For instance, in *Club Vista Fin. Services, LLC v. Maslon Edelman Borman & Brand,*
18 *LLP*, a plaintiff filed suit against a law firm alleging malpractice with respect to real estate
19 transactions in Arizona. 10-cv-0412-PHX-GMS, 2010 WL 2231926, at *1–2 (D. Ariz.
20 June 2, 2010). The law firm argued, among other things, that the first-to-file rule applies
21 because of a previously filed case against the law firm pending in the District of North
22 Dakota. *Id.* at *6–7. The Court rejected this argument because the issues in the two cases
23 were “not substantially similar”—the “North Dakota action pertain[ed] to [the law firm’s]
24 alleged malpractice with respect to real estate transactions in Nevada” while “[t]he instant
25 case pertain[ed] to malpractice involving Arizona real estate and guarantees.” *Id.* at *7.

26 Here too, the California Matter relates to different conduct in a different state. The
27 California Matter concerns an *in-network* billing scheme where Radiology Partners
28 funneled claims from other medical groups through another medical group with more

1 lucrative reimbursing contracts in Texas, North Carolina and Florida. D.E. 24, Ex. 2. In
2 contrast, the present action relates to an *out-of-network* billing scheme where Radiology
3 Partners created a sham medical group so it could bill claims out-of-network, initiate IDRs
4 under the NSA, and reap millions in ill-gotten funds. Compl. ¶¶ 112-185. This case also
5 only relates to medical groups in Arizona—which was never the subject of any of United’s
6 allegations in the California Matter. Compare *id.* at 57–64 with D.E. 24, Ex. 2.

7 Further, none of the issues raised in this action will be resolved in the California
8 Matter. In particular, this lawsuit raises issues related to the NSA IDR process—including
9 whether Defendants initiated disputes in the IDR process for ineligible services, whether
10 Defendants made fraudulent statements in the IDR process, and if Defendants have
11 improperly gamed the IDR process to extract windfalls. *See* Compl. ¶¶ 28–49. Because
12 all the claims at issue in the California Matter were billed in-network, the NSA—which is
13 only available for out-of-network claims—is completely untouched by the California
14 Matter.

15 **C. The Parties to the California Matter are Different.**

16 This California Matter also “involves [an] additional part[y] that [is] not present in
17 the instant litigation.” *Club Vista Fin. Services, LLC*, 2010 WL 2231926, at *7.
18 Specifically, while United affiliates and Radiology Partners are both parties to the
19 California Matter, Sonoran is not. D.E. 24, Ex. 2. This is particularly important here
20 because the claims at issue were billed under Sonoran’s name and it was Sonoran who
21 purportedly initiated the IDRs at issue. *See, e.g.*, Compl. at ¶¶ 71 & 73. Sonoran is also
22 the only party that is subject to United’s claim for vacatur of the ineligible IDR awards.
23 *Id.* at ¶¶ 244–59.

24 Defendants’ contention that the factor tilts in its favor because “Sonoran is a
25 subsidiary of RP” is simply wrong and has no legal support. First, Sonoran is not a party
26 to the California Action and must be a named party for United’s vacatur claim. Second,
27 Sonoran is incorporated in Arizona and only conducts business in Arizona. Compl. at ¶
28 17. Given its geographically limited conduct, the Court in California Matter would not

1 even have personal jurisdiction over Sonoran. *See Sporn v. TransUnion Interactive, Inc.*,
2 No. 18-cv-05424-YGR, 2019 WL 151575, at *6 (N.D. Cal. Jan. 10, 2019) (“A district
3 court may only transfer an action pursuant to the first-to-file rule to a transferee district
4 “where it might have been brought.”). Accordingly, Sonoran’s unique and necessary
5 presence in this case weighs against application of the first-to-file rule.

6 **D. Equity Precludes Application of the First-to-Rule Apply Here.**

7 Finally, “the most basic aspect of the first-to-file rule is that it is discretionary, and
8 a court may decide not to apply it based on “reasons of equity.” *Caremark LLC*, 2021
9 WL 2780859 at *2. *See also Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1149
10 (E.D. Cal. 2010) (“Even assuming the three requirements of the first-to-file rule are
11 satisfied here, it does not follow that application of the rule is appropriate.”). The equities
12 in this case weigh against application of the first-to-file rule.

13 ***Key witnesses and evidence are in Arizona.*** One exception to the “first-to-
14 file rule is the balance of convenience.” *Best W. Intern., Inc. v. Mahroom*, No. 07-cv-827-
15 PHX-JAT, 2007 WL 1302749, at *3 (D. Ariz. May 3, 2007). *See also Guthy-Renker*
16 *Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 273 (C.D. Cal. 1998)
17 (“[R]elative ease of access to proof may be considered in deciding whether to transfer an
18 action.”). Here, this case concerns the billing of claims for services performed by Arizona-
19 based medical groups in Arizona. Compl. at ¶¶ 57–64; 79–185. To this end, the medical
20 groups and their radiologists—all located in Arizona—will likely be key witnesses and
21 sources of evidence in this matter.

22 ***Arizona has a superior connection to the dispute.*** Courts also examine whether
23 transfer of a suit under the first-to-file rule is proper in the context of a forum having “no
24 relation [to] the dispute.” *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093,
25 1100 (N.D. Cal. 2006). Again, this lawsuit concerns the billing of medical services
26 provided in Arizona, by Arizona medical groups, to patients throughout Arizona. Compl.
27 at ¶¶ 57–64; 79–185. The effects of this scheme are also leading to increase in costs for
28

1 radiology services across the state of Arizona. *Id.* at ¶ 185. Arizona is the principal locus
2 of this case.

3 ***The California Matter has not progressed.*** Courts also assess the relative
4 progression of the cases. *See Young v. Trump*, 506 F. Supp. 3d 921, 933 (N.D. Cal. 2020)
5 (“Moreover, where the later-filed action has progressed further, efficiency considerations
6 also disfavor application of the rule.”). The California Matter has not progressed to
7 discovery or a decision on the merits of the case and won’t.

8 Accordingly for the reasons set forth herein, Defendants’ request to dismiss, transfer
9 or stay this action pursuant to the first-to-file rule must be denied.

10 **II. Defendants’ Motion to Dismiss Should be Denied in its Entirety.**

11 In the alternative, Defendants ask this Court to dismiss all of United’s claims in their
12 entirety. “To survive a motion to dismiss, a complaint must contain sufficient factual
13 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*
14 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
15 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that
16 allows the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” *Id.* “In ruling on a Rule 12(b)(6) motion to dismiss, the well-pled
18 factual allegations are taken as true and construed in the light most favorable to the
19 nonmoving party.” *Biltform Architecture Group, Inc. v. Inv. Dev. Mgmt., LLC*, No. 23-
20 CV-00297-PHX-SMB, 2023 WL 12140369, at *2 (D. Ariz. Oct. 27, 2023) (citing *Cousins*
21 *v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009)).

22 Contrary to these standards, Defendants’ ignore most of the factual allegations in
23 the Complaint and instead ask the Court to draw inferences in their favor and resolve
24 factual disputes. As such, Defendants’ motion under Rules 9 and 12 should be denied for
25 the reasons set forth below.

1 **A. The Complaint Contains Well-Pleaded Factual Allegations to Support**
2 **United’s Claims for Fraud and Negligent Misrepresentation.**

3 To establish a claim for fraud under Arizona law, a plaintiff must sufficiently plead:
4 “(1) a representation, (2) its falsity, (3) its materiality, (4) the speaker’s knowledge of its
5 falsity or ignorance of its truth, (5) the speaker’s intent that it be acted upon by the recipient
6 in the manner reasonably calculated, (6) the hearer’s ignorance of its falsity, (7) the
7 hearer’s reliance on its truth, (8) the right to rely on it, and (9) a consequent and proximate
8 injury.” *SPUS8 Dakota LP v. KNR Contractors LLC*, 641 F. Supp. 3d 682, 696 (D. Ariz.
9 2022) (internal quotation marks and citation omitted). Similarly, a claim for negligent
10 misrepresentation requires the following: “(1) the defendant provided false information in
11 a business transaction; (2) the defendant intended for the plaintiff to rely on the incorrect
12 information or knew that it reasonably would rely; (3) the defendant failed to exercise
13 reasonable care in obtaining or communicating the information; (4) the plaintiff justifiably
14 relied on the incorrect information; and (5) resulting damage.” *Id.* at 697.

15 Here, United has pleaded each element with particularity. United alleges that
16 Sonoran operates as a shell company: claims from other in-network providers are funneled
17 through Sonoran for the sole purpose of obtaining higher, out-of-network reimbursement
18 rates and initiating NSA IDRs. United alleges that in 2019, the CEO of Radiology
19 Partners, Rich Whitney, incorporated an entity that became known as Sonoran. Compl. ¶¶
20 66–67. Once Sonoran obtained its own TIN, Radiology Partners “rebranded the other
21 Arizona groups it had acquired . . . as ‘divisions’ of Sonoran” for the sole purpose of
22 billing under Sonoran’s TIN and obtaining higher reimbursement rates. *Id.* ¶ 70. These
23 medical groups, however, are not divisions of Sonoran and instead “continue[d] to be
24 separate and standalone legal entities” several of which “have active and enforceable
25 network contracts in place with United.” *Id.*

26 By billing claims to United under Sonoran’s name and TIN, Sonoran falsely
27 represented to United that Sonoran performed the services being billed when, in reality,
28 the services were performed by providers who worked for medical groups other than

1 Sonoran. *Id.* ¶¶ 73, 195–96. These representations were material to United’s determination
2 of whether the claims were payable to Sonoran and the amount to pay for each of those
3 claims. *Id.* ¶ 197. United relies on providers to use the appropriate TIN to identify the
4 medical group that performed the services—how the claims are processed and paid is
5 dependent on the TIN use to bill the claim. *Id.* ¶ 197–98. United further alleges that
6 Sonoran and Radiology Partners made these representations intentionally to obtain higher
7 out-of-network reimbursement amounts than United would have paid under its contracts
8 with the medical groups who performed the services. *Id.* ¶ 199. And Sonoran and
9 Radiology Partners did, in fact, obtain much higher reimbursements by engaging in this
10 pass-through billing scheme. *See id.* ¶¶ 89–90, 97, 101–02, 109.

11 United provides several examples of how this fraudulent scheme worked in practice
12 detailing claim specific examples throughout the Complaint. Compl. ¶¶ 84–111; 123–55.
13 For instance, Dr. Michelle Lai joined SMIL in 2011 and her services were billed in-
14 network using SMIL’s TIN from 2011 through 2020. *Id.* ¶ 99. Beginning in January 2021,
15 Dr. Lai’s services were billed as out-of-network claims under Sonoran’s TIN, which
16 constitutes a representation that Sonoran performed the services. *See id.* ¶¶ 100–03. That
17 representation is false. Dr. Lai performed the services on behalf of SMIL, not Sonoran.
18 Dr. Lai appears on SMIL’s website, and her license to the Arizona Medical Board—which
19 was renewed in July 2024—lists her as being a SMIL radiologist. *Id.* ¶¶ 105–07. That is
20 because, aside from using Sonoran’s TIN, medical groups like SMIL “continue to operate
21 independently” and “the doctors that work for those groups all understand they work for
22 medical groups other than Sonoran.” *Id.* ¶ 192. Together, these allegations are sufficient
23 to plead fraud and negligent misrepresentation.

24 Defendants mistake the scope of the alleged fraud by arguing that it is implausible
25 to suggest that providers began billing under Sonoran’s TIN in 2020 to “obtain[] greater
26 out-of-network reimbursement through the NSA IDR process” because the NSA “did not
27 even exist then.” D.E. 26 at 17. But the Complaint also details Defendants’ *pre-NSA* pass-
28 through billing scheme, under which they funneled claims for services performed by

1 contracted providers through Sonoran for the purpose of obtaining higher out-of-network
2 reimbursement rates. Compl. ¶¶ 84–111. Thus, the scheme began before the NSA was
3 created and the Complaint is clear that United seeks damages related to both pre- and post-
4 NSA conduct. When the NSA went into effect, Defendants simply added fuel to their
5 existing scheme by taking advantage of the NSA’s IDR framework to obtain even higher
6 reimbursements in the form of ineligible IDR awards.

7 Defendants next argue that United has failed to plead fraud with particularity
8 because it has only identified five radiologists that are affiliated with other medical groups
9 and “makes no effort to even tie the five specified radiologists to any specified bill.” D.E.
10 26 at 21. But this is not true—as United’s complaint walks through numerous examples
11 tying claims to providers. Compl. ¶¶ 84–111. In any event, “[t]he Ninth Circuit . . . has
12 held that where a complaint ‘identifies the circumstances of the alleged fraud so that
13 defendants can prepare an adequate answer,’ the details of specific transactions are not
14 required.” *Luna v. Marvell Tech. Grp. Ltd.*, No. 15-CV-05447, 2016 WL 5930655, at *9
15 (N.D. Cal. Oct. 12, 2016) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).
16 Thus, United is not required to identify every bill or provide a list of every radiologist
17 operating under this scheme—especially when United has alleged there are tens of
18 thousands of fraudulent transactions at issue. Compl. ¶ 122. Rather, United has done what
19 is required by explaining the fraudulent scheme in detail and including examples to
20 illustrate how the fraudulent scheme worked. United therefore has provided enough
21 “corroborating details that would allow [D]efendants to identify the challenged
22 transactions.” *Luna*, 2016 WL 5930655 at *10 (internal quotation marks and citation
23 omitted). Further, because Sonoran is just a sham entity, all claims billed by it were
24 necessarily pass-through billed. Likewise, all claims that Sonoran submitted to the IDR
25 process were improper. Defendants cannot credibly argue that they are unable to
26 understand the factual basis or the scope of United’s allegations.

27 Defendants further argue that United has not pleaded with particularity that any of
28 Sonoran’s representations were false. In making this argument, Defendants look outside

1 the pleadings. They argue that (1) United has not alleged that Sonoran lacked hospital
2 staffing contracts and (2) it is judicially noticeable that “physicians can and often are
3 affiliated with multiple physician groups.” D.E. 26 at 19. These are defenses that
4 Defendants may argue at a later stage of the proceedings. But at the motion-to-dismiss
5 phase, a plaintiff has no obligation to anticipate and disprove defenses that have not yet
6 been raised. *See Tyler v. Hennepin Cnty.*, 598 U.S. 631, 637 (2023) (“At this initial stage
7 of the case, Tyler need not definitively prove her injury or disprove the County’s
8 defenses.”). “Even Rule 9 does not require plaintiffs to disprove defendants’ possible
9 theories; it simply requires a party to ‘state with particularity the circumstances causing
10 fraud.’” *Mycone Dental Supply Co. v. Creative Nail Design, Inc.*, No. CIV.A. 11-4380
11 JBS, 2012 WL 3599368, at *5 (D.N.J. Aug. 17, 2012) (quoting Fed. R. Civ. P. 9(b)).

12 Moreover, Defendants cannot use judicial notice to resolve disputed issues of fact.
13 *See United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (“[W]e may
14 not, on the basis of evidence outside of the Complaint, take judicial notice of facts
15 favorable to Defendants that could reasonably be disputed.”). For example, although
16 Defendants argue that it is judicially noticeable that physicians often affiliate with multiple
17 physician groups, what is common practice in the industry is “subject to reasonable
18 dispute” and therefore not suitable for judicial notice. *Id.* (internal quotation marks and
19 citation omitted).

20 Even if these arguments were appropriate at this stage, they are red herrings. No
21 contract between Sonoran and a hospital could give Defendants the right to bill false or
22 misleading claims to United or to submit ineligible disputes to the NSA IDR process. In
23 addition, while Defendants assert that physicians commonly affiliate with multiple
24 medical groups, the Complaint here alleges the opposite: the physicians whose claims are
25 billed using Sonoran’s TIN are not affiliated with Sonoran. Rather, United alleges that
26 Sonoran functions as a shell company through which Radiology Partners bills the claims
27 of its other medical groups for the sole purpose of obtaining higher reimbursement rates.
28 For the same reason, Defendants’ reliance on the CMS-1500 billing form—arguing that it

1 does not require them to list other groups in which physicians are affiliated—is entirely
2 irrelevant and ignores the core allegations in the Complaint. *See* D.E. 26 at 21.

3 The Complaint contains well-pleaded factual allegations to support United’s claims
4 for fraud and negligent misrepresentation, and Defendants’ motion to dismiss should be
5 denied.

6 **B. United States a Claim for Vacatur Based on Sonoran’s Fraud During**
7 **the NSA IDR Process and Because the Arbitrators Exceeded their**
8 **Powers.**

9 Defendants next seeks dismissal of United’s claim seeking vacatur of the ineligible
10 IDR awards. The NSA “provides that an IDR award ‘shall not be subject to judicial
11 review, except in a case described in any of paragraphs (1) through (4) of section 10(a)’
12 of the Federal Arbitration Act.” *Guardian Flights, L.L.C. v. Health Care Serv. Corp.*, 140
13 F.4th 271, 274 (5th Cir. 2025) (quoting 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II)). Section
14 10(a) of the Federal Arbitration Act (“FAA”) allows a court to vacate an award “where
15 the award was procured by corruption, fraud, or undue means,” 9 U.S.C. § 10(a)(1), and
16 “where the arbitrators exceeded their powers, or so imperfectly executed them that a
17 mutual, final, and definite award upon the subject matter submitted was not made,” *id.* §
18 10(a)(4). Here, United has adequately pleaded facts to support vacatur under both subparts
19 (a)(1) and (a)(4).

20 **i. United States a Claim for Vacatur Based on Fraud.**

21 To vacate an award based on fraud, a plaintiff must demonstrate “that the fraud was
22 (1) not discoverable upon the exercise of due diligence prior to the arbitration, (2)
23 materially related to an issue in the arbitration, and (3) established by clear and convincing
24 evidence.” *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 (9th Cir.
25 1992) (citation omitted). Because United has alleged each element, Defendants’ motion
26 should be denied.

1 **1. The Fraud was not Discoverable.**

2 Defendants overlook the many ways described by the Complaint in which
3 Defendants hid their fraud from United. For example, Radiology Partners gave its
4 employees strict guidelines about how to interact with health plans, including United, to
5 prevent anyone from tipping the plans off about the pass-through billing scheme. Compl.
6 ¶ 187. Employees were further instructed not to communicate with certain departments at
7 United and to submit requests to United in a manner specifically designed to avoid raising
8 red flags. *Id.* ¶ 188. Employees who complained were disciplined or terminated. *Id.* ¶ 189.
9 Thus, the Complaint alleges that United not only was unaware of the fraud, but that
10 Defendants took steps to ensure that United would not become aware. Defendants’ motion
11 ignores these allegations.

12 Instead, Defendants ask the Court to improperly resolve a factual dispute in
13 Defendants’ favor by arguing that the fraud was discoverable. Defendants argue that
14 because United was in possession of claims data that showed changes in the groups’
15 billing volume, therefore United must have been aware of Defendants’ scheme. D.E. 26
16 at 24 (citing Compl. ¶ 76). This argument fails not only because it is procedurally improper
17 on a motion to dismiss, but also because it is illogical. United’s data may show a decrease
18 in certain medical groups’ billing and an increase in Sonoran’s billing, but there was no
19 reason for United to conclude such changes were even related to each other, much less
20 that they were the result of a complex fraud being perpetrated by Defendants. Indeed,
21 United has alleged that it receives millions of claims a week and that the vast majority of
22 claims are auto-adjudicated. Compl. ¶ 200. United has pleaded that it was unaware of the
23 fraud and that Defendants took affirmative steps to conceal it from United, which is more
24 than sufficient at this stage.

25 Defendants next argue that due diligence required United to “request additional
26 information from Sonoran in the 30 days prior to making an initial payment, or in the 30-
27 day NSA open negotiation period.” D.E. 26 at 24. But Defendants cite no authority
28 imposing such an obligation on United nor do they explain how United requesting

1 additional information about a claim would have caused Defendants to disclose their
2 fraudulent scheme. In any event, what constitutes “due diligence” under the circumstances
3 presented here is a fact-intensive inquiry that should not be resolved at this stage.

4 Lastly, Defendants point to the separate California lawsuit as evidence of notice.
5 But just because Radiology Partners engaged in fraudulent schemes in three other states
6 does not mean that United was on notice of all other fraudulent schemes that Radiology
7 Partners was engaging in. Nor should Radiology Partners be able to use its prior
8 misconduct as a shield against liability for its scheme in Arizona.

9 **2. The Fraud was Material.**

10 Defendants do not dispute that their fraud was material. Absent Defendants’
11 fraudulent misrepresentation that the claims were within the eligible for the NSA IDR
12 process (*i.e.*, were rendered by a non-contracted provider), there would not be any IDR
13 awards in their favor and against United.

14 **3. The Fraud is Established by Clear and Convincing Evidence.**

15 As for the final element, Defendants do not engage with United’s NSA-related fraud
16 allegations. Instead, Defendants assert in a conclusory manner that because Plaintiffs
17 failed to allege fraud with respect to the pre-NSA allegations, they also failed to do so
18 with respect to the NSA allegations.

19 United alleges that Defendants improperly initiated more than 78,000 claims under
20 the NSA’s IDR process. Compl. ¶ 122. Each time, Defendants falsely represented to
21 United, the Department of Health & Services, and the IDR entities that the services
22 qualified for the process and were payable to Sonoran and/or rendered by a
23 “nonparticipating provider or a nonparticipating facility.” *Id.* ¶¶ 122, 248, 250. In reality,
24 these services were rendered by participating providers that had a contractual relationship
25 with United and thus were not eligible for the IDR process. *Id.* ¶ 251. But for this false
26 certification and the submission of an IDR-ineligible claim, none of the awards would
27 have been issued. The Complaint provides several examples of services rendered by
28

1 participating providers that Sonoran then improperly disputed through the IDR process.
2 *Id.* ¶¶ 123–55. Defendants simply ignore these well-pleaded allegations.

3 **ii. United States a Claim for Vacatur Based on the NSA IDR Entities**
4 **Exceeding their Powers.**

5 United also seeks vacatur under § 10(a)(4) because the IDR entities exceeded their
6 powers by rendering awards for services provided by in-network providers and the IDR
7 process is limited by statute to out-of-network providers. “A party has a right to arbitration
8 according to the terms for which it contracted.” *Lagstein v. Certain Underwriters at*
9 *Lloyd’s, London*, 607 F.3d 634, 643 (9th Cir. 2010) (internal quotation marks and citation
10 omitted). Arbitrators exceed their powers “when they act outside the scope of the parties’
11 contractual agreement.” *Id.* (internal quotation marks and citation omitted). For example,
12 an arbitrator exceeds his authority “in attempting to bind” parties that are not subject to
13 the agreement “and thus could not be bound by its provisions.” *Comedy Club, Inc. v.*
14 *Improv West Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009).

15 The NSA process works differently than traditional arbitration in that “the IDR
16 entities’ powers are derived from the language of the NSA and its related guidance,” rather
17 than an arbitration agreement. *Guardian Flight, LLC v. Aetna Health Inc.*, 711 F. Supp.
18 3d 662, 674 (S.D. Tex. 2024). But the same principles apply—an IDR entity exceeds its
19 powers when it “act[s] outside the scope” of the statute. *See Lagstein*, 607 F.3d at 643.

20 Here, United has alleged that Sonoran disputed more than 78,000 claims through
21 the IDR process that were ineligible. The IDR process applies only to “an item or service
22 furnished . . . by a nonparticipating provider” 42 U.S.C. § 300gg-111(c)(1)(A). A
23 nonparticipating provider means “a physician or other health care provider who is acting
24 within the scope of practice of that provider’s license or certification under applicable State
25 law *and who does not have a contractual relationship with the . . . issuer . . . for furnishing*
26 *such item or service” Id.* § 300gg-111(a)(3)(G)(i) (emphasis added). Because the IDR
27 Entities granted awards to Sonoran for services rendered by *participating* providers, which
28

1 is prohibited by the statute, the IDR Entities acted outside the scope of the statute and thus
2 exceeded their powers.

3 Defendants argue that United has failed to demonstrate a basis for vacatur under this
4 provision because there are no allegations that the IDR Entities were aware of the law and
5 intentionally disregarded it. D.E. 26 at 25. Defendants read the law too narrowly. Section
6 10(a)(4) applies “when arbitrators purport to exercise powers that the parties did not intend
7 them to possess or otherwise display a manifest disregard for the law.” *Kyocera Corp. v.*
8 *Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 1002–03 (9th Cir. 2003). The
9 Complaint focuses on the former: in granting awards to ineligible claims, the IDR Entities
10 exercised powers that are not provided by the statute. United is not required to plead a
11 manifest disregard for the law to demonstrate a violation of § 10(a)(4). *See Aspic Eng’g*
12 *& Constr. Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1166 (9th Cir. 2019)
13 (An arbitrator exceeds their powers when “the arbitration decision fails to draw its essence
14 from the agreement [or statute]”).

15 Because the Complaint has adequately pleaded vacatur under both subparts (a)(1)
16 and (a)(4), Defendants’ motion to dismiss should be denied.

17 **C. United States a Claim for Civil Conspiracy.**

18 United has adequately pleaded a claim for civil conspiracy. Under Arizona law,
19 “civil conspiracy requires that two or more individuals agree and thereupon accomplish
20 ‘an underlying tort which the alleged conspirators agreed to commit.’” *Wells Fargo Bank*
21 *v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund*, 38 P.3d
22 12, 36–37 (Ariz. 2002). Defendants argue that the claim should be dismissed because
23 United has failed to plead the underlying tort, but as explained above, United has pleaded
24 Defendants’ fraudulent scheme with particularity.

25 In addition, Defendants argue in a single sentence that “United fails to plead with
26 particularity any agreement between RP, Sonoran, and any of the other alleged
27 participants (private-equity firms, medical groups).” D.E. 26 at 26. This argument ignores
28 the allegations. To prove civil conspiracy, an agreement need not be express; it can be

1 inferred from circumstantial evidence, coordinated conduct, and the roles played by
2 participants in carrying out the wrongful scheme. *See Dawson v. Withycombe*, 163 P.3d
3 1034, 1053 (Ariz. Ct. App. 2007) (“A conspiracy may be established by circumstantial
4 evidence through the nature of the acts, the relationship of the parties, the interests of the
5 conspirators, or other circumstances.”). United’s allegations fit squarely within that
6 framework. The Complaint explains how Radiology Partners designed the scheme,
7 acquired the medical groups, controlled their billing operations, and directed that claims
8 be funneled through Sonoran’s out-of-network TIN. Compl. ¶ 223. Sonoran submitted the
9 claims and received payments to which it had no entitlement. *Id.* The private-equity firms
10 financed the acquisitions that enabled the scheme to grow, and the acquired medical
11 groups supplied the physician volume needed to sustain it. *Id.* Thus, each participant
12 played a crucial role in the scheme and benefited from the wrongdoing. From this
13 coordinated conduct, the Court can readily infer an agreement, and aside from their
14 conclusory assertion, Defendants have not explained how these allegations are
15 insufficient.

16 **D. United Adequately Alleges Claims for Money Had and Received and**
17 **Unjust Enrichment.**

18 Defendants’ only argument for dismissal of United’s money-had-and-received and
19 unjust enrichment claims is that these counts “rely on the same alleged fraud that . . . [is]
20 not properly pleaded.” D.E. 26 at 27. Because United has pleaded fraud with particularity,
21 this argument fails. Defendants offer no other basis for dismissal of these claims.

22 **E. United Alleges State and Federal RICO Claims.**

23 To state a federal RICO claim, a plaintiff must plead “(1) conduct (2) of an
24 enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5)
25 causing injury to plaintiff’s ‘business or property.’” *In re Toyota Corp. Unintended*
26 *Acceleration Mktg., Sales Pracs., & Prods. Liab. Litig.*, 826 F. Supp. 2d 1180, 1201 (C.D.
27 Cal. 2011) (internal quotation marks and citation omitted). “To show the existence of an
28 enterprise under the second element, plaintiffs must plead that the enterprise has (A) a

1 common purpose, (B) a structure or organization, and (C) longevity necessary to
2 accomplish the purpose.” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d
3 990, 997 (9th Cir. 2014). Arizona’s RICO statute is “analogous,” and Arizona courts “look
4 to federal interpretations for guidance.” *Lifeflite Med. Air Transp., Inc. v. Native Am. Air*
5 *Servs., Inc.*, 7 P.3d 158, 161 (Ariz. Ct. App. 2000).

6 Defendants argue that these claims should be dismissed because United has not
7 stated a claim for fraud. D.E. 26 at 28. As explained above, United has pleaded fraud with
8 particularity and thus this argument should be rejected. Defendants’ remaining argument
9 is focused on the second element of the RICO claims: whether United has alleged an
10 enterprise. Specifically, Defendants take aim at the “common purpose” sub-element. “In
11 evaluating the parties’ competing arguments regarding the existence of a common
12 purpose, the court will not require an allegation of fraudulent common purpose but is
13 mindful of the guidance that entities engaged in ‘ordinary business conduct and an
14 ordinary business purpose’ do not necessarily constitute an ‘enterprise’ bound by common
15 purpose under RICO.” *In re Arizona Theranos, Inc., Litig.*, 308 F. Supp. 3d 1026, 1060
16 (D. Ariz. 2018) (quoting *Shaw v. Nissan N. Am., Inc.*, 220 F. Supp. 3d 1046, 1054 (C.D.
17 Cal. 2016)).

18 Defendants assume that because the parties involved in the RICO enterprise—
19 Radiology Partners, Sonoran, the medical providers, and private-equity firms—are all
20 businesses, their conduct must therefore be characterized as “ordinary business conduct.”
21 D.E. 26 at 28. Not so. “[W]hen the essential purpose of a particular business relationship
22 is fraud, the related conduct is ‘not ordinary or normal business activities.’” *In re Duramax*
23 *Diesel Litig.*, 298 F. Supp. 3d 1037, 1080 (E.D. Mich. 2018) (citation omitted). Here, the
24 facts alleged demonstrate that each entity was “aware of and contribute[d] to the fraud”
25 and therefore “they cannot argue that they have a routine commercial relationship.” *Id.* at
26 1081. United alleges that the private-equity firms contributed funds for the purpose of
27 “play[ing] shell games with submitting claims to maximize profits”; Radiology Partners
28 acquired medical groups and controlled their billing for the purpose of funneling their

1 claims under Sonoran’s TIN; Sonoran gave Radiology Partner’s its out-of-network TIN
2 and submitted the claims to deceive United and receive increased reimbursements; and
3 the medical groups allowed their services to be billed under Sonoran’s TIN so the scheme
4 could realize increased volumes. Compl. ¶ 262. None of this was ordinary business
5 activity.

6 Defendants make general assertions that their “organizational relationships and
7 business activities” are “ordinary,” yet they identify no allegation in the Complaint to
8 support that characterization. D.E. 26 at 28. They cannot point to anything more specific
9 because, as the Complaint details, their conduct was not ordinary at all. Moreover, the
10 cases that Defendants rely upon are distinguishable. For example, in *In re Countrywide*
11 *Fin. Corp. Mortg.-Backed Sec. Litig.*, No. 2:11-cv-07166, 2012 WL 10731957, at *8 (C.D.
12 Cal. June 29, 2012), the non-parties “had longstanding business relationships with the
13 Countrywide Defendants” and nothing in the complaint created “a plausible inference that
14 the purpose of those relationships was to ‘profit illegally from the sale, securitization, and
15 servicing of Countrywide mortgage loans.’” Here, in contrast, Sonoran, Radiology
16 Partners, and the medical providers shared no such established relationships; their
17 relationship arose solely to execute the pass-through billing scheme. Indeed, the reason
18 Sonoran was created was to operate as a shell company for the scheme. Because these
19 entities associated together with the “manifest purpose of defrauding” United, the
20 Complaint sufficiently alleges a common purpose and Defendants’ motion to dismiss
21 should be denied. *In re Duramax Diesel Litig.*, 298 F. Supp. 3d at 1080; *see also Bias v.*
22 *Wells Fargo & Co.*, 942 F. Supp. 2d 915, 941 (N.D. Cal. 2013) (“[T]he alleged common
23 purpose here was to limit costs and maximize profits through concealment of marked-up
24 fees. As alleged, this scheme to profit is a sufficient common purpose.”).

25 **F. United Adequately Pleads Aiding and Abetting.**

26 Under Arizona law, aiding-and-abetting liability requires (1) an underlying tort, (2)
27 the defendant’s knowledge that the primary tortfeasor’s conduct is wrongful, and (3)
28 substantial assistance to that tortfeasor. *Wells Fargo Bank v. Ariz. Laborers, Teamsters &*

1 *Cement Masons Local 395 Pension Fund*, 38 P.3d 12, 23 (Ariz. 2002). Defendants again
2 argue this claim fails because the underlying tort fail. As established above, it does not.

3 Defendants' remaining argument is that "United makes no effort to describe any
4 conduct that is distinct from the primary tort that would constitute aiding and abetting."
5 D.E. 26 at 29. Defendants rely on *Aguado v. XL Ins. Am.*, 721 F. Supp. 3d 811, 816 (D.
6 Ariz. 2024), where the court concluded "for an aiding and abetting claim against an
7 adjuster or a third-party administrator to be viable, the plaintiff must allege some action
8 taken separate and apart from the facts giving rise to a claim against the insurer." (cleaned
9 up) (citing cases applying the same rule in the insurance-adjuster bad-faith context).

10 Defendants cite no authority applying this "separate action" rule outside the
11 insurance bad-faith context, nor do they provide any basis for extending the rule beyond
12 that narrow setting. *See, e.g., Kubli v. AmTrust Ins. Co. of Kansas*, No. 18-cv-02053, 2019
13 WL 13196105, at *3 (D. Ariz. Oct. 30, 2019) ("[T]he Court agrees with Defendants that
14 an aiding-and-abetting claim in the insurance bad-faith context requires some action taken
15 by the adjuster separate and apart from the facts giving rise to the bad-faith claim against
16 the insurer" (cleaned up)). This case is more similar to *In re Arizona Theranos, Inc.*
17 *Litigation*, where the court permitted both fraud and aiding-and-abetting claims to proceed
18 against Walgreens without imposing any "separate action" requirement. 308 F. Supp. 3d
19 at 1058–59.

20 Here, United alleges that both Sonoran and Radiology Partners were aware of the
21 underlying fraud and provided substantial assistance. Their tortious conduct extends
22 beyond submitting false claims. Radiology Partners created the scheme, acquired the
23 medical practices that then participated in the scheme, and created Sonoran as a shell
24 company. Compl. ¶¶ 57–70. Sonoran provided its TIN and allowed the other medical
25 groups to be falsely rebranded as "divisions" of Sonoran. *Id.* ¶¶ 69–70. Moreover, during
26 the scheme, United alleges that Radiology Partners went to extreme lengths to conceal the
27 fraud. *Id.* ¶¶ 186–92. For example, Radiology Partners gave its employees strict guidelines
28 about how to interact with United, and employees were disciplined if they spoke up or

1 filed complaints. *Id.* These allegations are sufficient at this stage to plead aiding and
2 abetting, and United is allowed to plead alternative claims. *See* Fed. R. Civ. P. 8(d); *Arnold*
3 *& Assocs., Inc. v. Misys Healthcare Sys.*, 275 F. Supp. 2d 1013, 1029 (D. Ariz. 2003).

4 **G. United Properly States a Claim for Declaratory Judgment.**

5 Defendants assert that the declaratory judgment claim cannot stand without the other
6 causes of action, but United has adequately pleaded each substantive claim. Moreover,
7 Defendants’ contention that declaratory relief is “superfluous” ignores that United alleges
8 an ongoing, active dispute regarding Defendants’ continued submission of claims under
9 Sonoran’s TIN, precisely the type of controversy declaratory judgment is designed to
10 resolve. Compl. ¶¶ 309–12; *see Steen v. Am. Nat’l Ins. Co.*, 609 F. Supp. 3d 1066, 1073
11 (C.D. Cal. 2022) (denying motion to dismiss declaratory judgment claim even where there
12 was “some overlap” with other claims because it was necessary to resolve uncertainties
13 that could “lead[] to any future harm”). And even if the claim were redundant, “[t]he
14 existence of another adequate remedy does not preclude a declaratory judgment that is
15 otherwise appropriate.” Fed. R. Civ. P. 57. Because the substantive claims survive and a
16 present controversy exists, United’s declaratory judgment claim is properly pleaded.

17 **CONCLUSION**

18 For the reasons set forth below, United respectfully submits that the Court should
19 deny Defendants’ motion to transfer, stay, or dismiss in its entirety.
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The undersigned hereby certifies, under penalty of perjury under the laws of the State of Arizona that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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