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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

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

Plaintiffs,

v.

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

Defendants.

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

REPLY BY RADIOLOGY PARTNERS, INC. AND SONORAN RADIOLOGY, LTD.'S IN SUPPORT OF THEIR MOTION TO TRANSFER, STAY, OR DISMISS UNDER THE FIRST-TO-FILE RULE, OR ALTERNATIVELY DISMISS PURSUANT TO FRCP 12(b)(6)

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I. INTRODUCTION

United's Opposition does nothing more than parrot the allegations of its copycat Complaint, which advances the same core allegations and theories set forth in prior filed matters, including the prior pending CA Lawsuit United filed in 2023. Thus, the Court should either apply the first-to-file doctrine to transfer this case to California, stay it pending the outcome there, or dismiss it. In the alternative, the Court should dismiss United's claims on the merits for failure to state a claim.

United's discontent at Sonoran seeking more reimbursement in contract negotiations and the NSA IDR process is no justification for this retributive lawsuit. Therefore, United seeks to circumvent the NSA IDREs by alleging the same theory it alleged in California. Specifically, United alleges here, as it did there, that RP supposedly causes its affiliated groups to bill for services by different affiliated groups. The CA Lawsuit said RP does this all over the country, identifying first one and then multiple affiliated groups as "merely examples," but the CA Lawsuit did not limit its scope to just those specified examples. Sonoran is just one more RP affiliate that United alleges to have done what United alleged in the CA Lawsuit.

United apparently hopes to flood the legal system with multiple cases in the hopes of finding a forum that will be misled by the fatal defects in its false narrative. According to United, Sonoran radiologists who either used to or still do provide services for other groups too cannot be the ones who render services for Sonoran at the facilities that choose Sonoran to staff their radiology departments. But radiologists are allowed to join other radiology groups, like they did when joining Sonoran, and are allowed to provide services on behalf of different organizations at different facilities. Likewise, United pretends that facilities cannot switch radiology groups. In fact, radiologists and facilities are not required to stay with the radiology group of United's choice or preference.

United's contrary allegations are implausible relative to the obvious alternative explanation that certain radiologists joined Sonoran, or are affiliated with both Sonoran and other entities, and that when radiologists provide services at facilities chosen by Sonoran, the radiologists are providing services on behalf of Sonoran, not the former or other group.

United's Opposition avers that this Court must blindly accept its conclusions of fraud despite judicially noticeable material, and material expressly referenced in United's Complaint that completely undercut United's false narrative. This explains the reason United's Opposition does not even attempt to address any of this material beyond United asserting that United "disputes" it. Therefore, if the case is not transferred or stayed, the Court should dismiss it because conclusory allegations cannot amount to the factual pleadings required to exclude the innocuous alternative explanation and nudge United's allegations "across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

Finally, United's attempt to circumvent the NSA IDRE decisions also fails as a matter of law. The Opposition concedes that United merely complains that Sonoran began providing services through certain radiologists and at certain facilities before the NSA and then exercised rights under the NSA to pursue additional reimbursement when Sonoran continued doing so after the NSA was effective. But the NSA does not permit vacatur based on allegedly discoverable fraud that could have been raised at the time, but was not, with the NSA IDREs. Thus, absent transfer or stay, the Court should dismiss those counts too.

II. THE FIRST-TO-FILE RULE SHOULD BE APPLIED TO TRANSFER

United's core allegations here are substantively the same as those in the CA Lawsuit; allegations that United characterizes as supporting a "national scheme." The only distinction raised in United's Opposition is that Sonoran is out-of-network with United, while the other groups referenced in the CA Lawsuit are (or were) in-network with United. But this does not change United's core theory that the services billed by the subject RP-affiliated medical group entity should have been billed by a different entity whom United alleges it could have paid less. Whether the services are contracted or noncontracted does not change United's allegation that RP has a national scheme to bill for services provided by doctors who are not rendering those services on behalf of the group for which the bill is submitted. United is flat wrong. But either way, it's the same contention already alleged in prior pending core case in California.

The parties agree that the three factors this Court should consider when exercising its discretion on whether to apply the first-to-file rule are: (1) chronology of the actions;

(2) similarity of the parties; and (3) similarity of the issues. (See, ECF No. 30: Opp. pp. 7-8) (citing *Caremark LLC*, 2021 WL 2780859, at *2 (D. Ariz. July 2, 2021). Nothing in United's Opposition changes that all three factors strongly favor applying the first-to-file rule here.

A. <u>There is no Dispute Over the Chronology of the Actions</u>

The first factor is clearly satisfied: the California Lawsuit came years before this one.

United misleadingly states that the "California Matter has not progressed," citing *Young v. Trump*, 506 F.Supp.3d 921, 933 (N.D. Cal. 2020), for the proposition that "where the later-filed action has progressed further, efficiency considerations also disfavor application of the rule." In fact, this later Arizona action has not progressed further than the CA Lawsuit. On the contrary, the CA Lawsuit first progressed through two rounds of motion practice, after which the CA Court compelled United to pursue arbitration, stayed the case, and required periodic updates so that the CA Court can monitor the outcome for future use. Thereafter, United submitted the core dispute to three separate arbitrations – i.e., North Carolina, Florida and Colorado. Final arbitration hearings are currently set to occur in April and August, 2026, in Florida and North Carolina, respectively; with Colorado set for final hearings next year. Thus, the CA Lawsuit has been progressing on the core issues, by virtue of the CA Court's order for United to proceed in arbitration where applicable, with updates to the CA Court. By contrast, this Arizona action is in its initial pleading stage. Thus, it is disingenuous for United to contend that this action has progressed further than the California Matter.

What's really happening is that United dislikes the more efficient way the CA Court decided to proceed and has decided to forum shop rather than attempt to proceed upon these allegations in the CA Lawsuit, which would require United addressing the stay there. United always wanted multiple forums. The CA Lawsuit itself was an attempt to allege in a courtroom what United already had alleged in the Texas arbitration. This Arizona filing is just the latest in a series of improper attempts at forum shopping.

B. <u>The Parties are Substantially Similar: Some the Same, the Rest Affiliates</u>

United does not dispute that the parties are substantially similar and that some parties on both sides of the "v" are identical. It only argues that the parties are not completely identical

in both actions. But United ignores the authority cited in the Motion that affiliates or subsidiaries of parties are sufficiently similar to support the first-to-file rule. *See*, ECF No. 26: Motion at pg. 13 (citing *Sprout Financial, LLC*, 2020 WL 1482627 (D. Ariz. Mar. 26, 2020); *Gonzalez v. UnitedHealth Grp., Inc.*, 2020 WL 2992174, at *3 (W.D. Tex. June 3, 2020).

United's contention that Sonoran "only conducts business in Arizona," and therefore supposedly would not be subject to personal jurisdiction in California, is a red herring. First, the Court could decide to stay or dismiss this action when applying the first-to-file rule, in which case the California court's jurisdiction over Sonoran is moot. Second, nothing would prevent Sonoran from consenting to the personal jurisdiction of a court – which this motion to transfer clearly does. *See, Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473, fn. 14 (1985). Third, United's own CA Lawsuit shows that it believes jurisdiction exists in California to allege wrongdoing relating only to other states that are farther away – i.e., Texas, North Carolina, and Florida. Indeed, United had no problem alleging a national scheme in the CA Lawsuit without alleging any facts having to do with any services rendered in California. Finally, personal jurisdiction does not prevent federal courts from transferring cases, as well as staying them, consolidating them, or coordinating them (e.g., MDLs), to prevent overly litigious plaintiffs from bogging down the court system with duplicative litigation.

C. <u>The Issues are Substantially Similar: Both Matters Involve United Alleging the Same Core Fraud for the Same Business Conduct</u>

United is again attempting to have this Court apply the incorrect standard – i.e., identical issues rather than substantially similar ones. The first-to-file rule does not require such. *Kohn L. Grp., Inc.,* F.3d at 1240; *Sprout Financial, LLC*, 2020 WL 1482627, at *3.

Even so, the core of United's allegations in both this action and the California Matter are the same. For example, United itself tells this Court that the CA Lawsuit relates "to a scheme in which Radiology Partners [ ] billed claims for services rendered by its affiliated medical groups in a given state under the name and TIN of the medical group with the highest contracted reimbursement rates in that state" rather than other RP-medical groups with lower contracted rates." Opp. p. 6. This describes the very same conduct United complains about

in the present action. *See, e.g.,* Opp. p. 5 (RP "began billing all of its Arizona-based medical groups under Sonoran's name and TIN," rather than other RP-medical groups with low contracted rates, such that "the services were processed as out-of-network which often resulted in higher reimbursements because they were billed using Sonoran's name and TIN."). Likewise, both actions take umbrage with radiologists being allowed to render services for Sonoran at the facilities that have chosen Sonoran to staff the facilities' radiology departments because those radiologists previously were affiliated with a different medical group, or are affiliated with multiple medical groups. Both actions also allege that United has contracts with those other groups containing lower rates. And both actions fail to factually allege that the groups with lower rates are the groups providing the services, *i.e.*, that they are the radiology group entities that have the contracts with the facilities to staff the radiology departments.

United's Opposition attempts to paint this case as different based solely on the CA Lawsuit involving only contracted medical groups, whereas Sonoran is noncontracted. But that does not change the core issue being whether the radiologists are providing services for the radiology group on the bill. United alleges the same core business model in both actions.

Both actions involve United's position that it is unlawful for radiologists to change or be associated with multiple medical groups, other than the medical group with the most favorable contract for United. Apparently, only United is allowed to engage in behavior to maximize its economic position, but when individual radiologists switch to a radiology group entity that has better reimbursement, United alleges "fraud."

United's arguments about the NSA also do not change its underlying alleged theory of fraud by "pass-through billing" involving different affiliated radiology groups. Indeed, though United's Opposition tries to paint a picture that RP concocted this core scheme to take advantage of the NSA IDRE process, United admits that Sonoran was billing United in 2020, years before the NSA when into effect, Comp. ¶ 75, and that the Complaint merely alleges that Sonoran continued to bill United in the same way after the NSA. Opp. at p. 15 ("When the NSA went into effect, Defendants simply added fuel to their existing scheme[,]" *i.e.*, nothing changed except Sonoran pursued NSA rights.). And United alleged the same core scheme in

the CA Lawsuit, and in all the arbitrations, as being pass-through billing regardless of whether the group is contracted or noncontracted. Thus, the NSA is nothing but an after-the-fact addition to what United has been saying elsewhere for several years.

United's contention there is no risk of duplicative litigation or conflicting results is pure sophistry. Opp. p. 9, citing *Caremark LLC*, 2021 WL 2780859, at *2. Both actions involve the same core issue: whether it is fraudulent or common business practice to have radiologists change medical group entities, or act on behalf of multiple entities. It does not matter to the alleged core scheme whether United pays more under a contract or through the NSA IDR process. What United alleges everywhere is that RP purportedly bills for services by a different group than the one that renders the services. United's core theory is wrong; but either way the core is substantially similar in all these forums.

Moreover, if there are any issues not addressed in the arbitrations, the CA Court still maintains jurisdiction over the prior pending, stayed lawsuit, precisely for the CA Court to address any remaining issues. Thus, United has no need or basis to file this copycat in Arizona. The health plan just has sour grapes that the CA Court made the efficient decision to stay the prior pending lawsuit so that the same core issues could be resolved in the first instance in arbitration. This avoids wasteful use of judicial resources or the risks of inconsistent results.

D. The California Lawsuit Being Stayed Pending Arbitration Does Not Foreclose the First-to-File Rule: It Supports the Rule

United's Opposition asks the Court to "not reach the merits of Defendants' first-to-file argument" because the California Lawsuit is stayed pending arbitration. Opp. p. 8. United paints the false picture that the stay acts as some sort of death knell to the first-to-file rule. Not so. The three factors for applying the first–to-file rule are not changed by the stay. If anything, the stay, coupled with the requirement for periodic monitoring, reflects the federal judge in California taking affirmative steps to handle the core dispute in the most appropriate matter.

United is wrong that a stay in the first-filed case precludes applying the first-to-file rule. *See, e.g.*, *Zou v. Mkt Am., Inc.*, 2019 WL 13218583, at *8-9 (N.D. Cal. Sept. 12, 2019) ("a stay in a first-filed case is not an inexorable command against applying the first-to-file rule.")

In fact, many district courts have transferred and dismissed actions based on the first-to-file rule when the first-filed action has been stayed pending arbitration. *See*, *e.g.*, *Zou*, at *8-8 (exercising its discretion to transfer the action to a first-filed action in another District Court stayed pending arbitration); *Nationwide Mut. Ins. Co. v. Universal Fid. Corp.*, 2002 WL 31409850 (dismissing second-filed action in favor of first-filed action that had been stayed pending arbitration). Indeed, Courts have even applied the first-to-file rule when the first-filed action was no longer pending. *See*, *Young v. L'Oreal USA, Inc.* 526 F.Supp.3d 700, 707-08 (N.D. Cal. 2021) (applying first-to-file rule when first-filed action was dismissed on the merits because ignoring the first-to-file rule would risk inconsistent judgments and "would squander any litigation that had already taken place"); *Molander v. Google LLC*, 473 F.Supp.3d 1013, 1019 (N.D. Cal. 2020) (applying first-to-file rule when first filed action was dismissed and pending appeal, because "appeal may resolve the very questions raised in the later-filed case").

United paints a false narrative that applying the first-to-file rule would deprive United "any avenue of relief" because the first action is stayed. Wrong. When the California Court stayed the CA Lawsuit, it retained jurisdiction and supervision over the matter. *See Smith v. Spizzirri*, 601 U.S. 472, 478 (2024) (district courts stay, rather than dismiss, a case compelled to arbitration to retain jurisdiction and supervision over the matter). If there are issues that remain unresolved in connection with this matter after arbitration concludes, those issues would proceed in district court when the case ultimately gets unstayed.

Moreover, once transferred to California, United will still have an avenue of relief, it will just be in the same forum as its already pending CA Lawsuit. All United will lose is the nonexistent right to forum shop by pursuing the same core arguments there and here. Transfer prevents the risk of inconsistent rulings on the shared core issues.

E. <u>There is no Equitable Reason to Not Apply the First-to-File Rule</u>

None of the reasons posited by United as "reasons of equity" to avoid the first-to-file rule have merit. United alleges in the CA Lawsuit that RP's purported "pass-through billing" scheme is one taking place "in several states across the country." ECF No. 24: RJN, Ex. 2 (CA Lawsuit, FAC) ¶ 88. United did not allege that the only states involved are Texas, Florida,

and North Carolina. Rather, United merely said those were "just a few examples[.]" *Id.* Moreover, when United filed its latest joint update to the CA Court, it also referenced its parallel arbitration filed in Colorado and United's lawsuit here in Arizona. RJN Ex. 6. Thus, United clearly saw the Colorado arbitration, and this Arizona lawsuit, as within the ambit of the CA Lawsuit. United only changed its story when Defendants invoked the first-to-file rule here.

Equities support applying the first-to-file rule. Filing this lawsuit as a separate action from prior pending cases is part of an attempt by United to forum shop rather than having to return to the CA Court that decided to stay its lawsuit, pending arbitration, so that the core issues could be addressed most efficiently.

III. IF NOT TRANSFERRED AND/OR STAYED, UNITED'S COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

A. United Fails to Plead any Fraudulent Activity or Misrepresentation

United's Opposition to the alternative motion to dismiss ignores that, when considering whether a claim has facial plausibility, the Court can "begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 663-64 (2009). The Opposition also ignores that the "court must also consider an 'obvious alternative explanation' for defendant's behavior,'" such that [w]hen faced with two possible explanations, only one of which can be true and only one of which results in liability …, [s]omething more is needed" than just facts which are consistent with both explanations, "such as facts tending to exclude the possibility that the alternative explanation is true." *Eclectic Properties East, LLC v. Marcus & Millicap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014).

As Defendants previously explained, United failed to sufficiently plead any fraud to support Count 1 under the applicable plausibility facial standard. *See* Motion at pp. 24-28. United's Opposition does not ameliorate any of the pleading deficiencies identified in the Motion, including:

1. The Complaint failed to plead facts ruling out the more obvious alternative explanation: Sonoran secured the facility staffing contracts, and contracted with the radiologists to provide services for those facilities

Complaints require more than factual allegations that could be consistent with both lawful and unlawful explanations for conduct. Here, United's copious use of the conclusory word "fraud" cannot mask that the specific facts it alleged do not give rise to fraud. United's Complaint and Opposition assert that RP acquired medical groups in Arizona (Opp. p. 4) and formed and registered Sonoran with its own TIN and NPI. (*Id.* at pg. 5). United says Sonoran then billed United under Sonoran's name and TIN for services rendered to United members. *Id.* United also says some of the radiologists billing under Sonoran were previously or concurrently affiliated with other RP-affiliated medical groups that had contracts setting reimbursement rates with United. *Id.* United apparently would have preferred that those services be billed by the non-Sonoran group because United had a discounted contract rate with those other groups. But Sonoran does not have a contract with United. Thus, United had to process and pay Sonoran's bills on an out-of-network basis. Opp. p. 5.

As the Motion explained, on its face, there is nothing fraudulent about these facts. Mot. pp. 17-22. Together, these facts amount to a newly formed radiology group entity providing services through radiologists, and at service locations, previously affiliated with another entity.

United's conclusory allegations otherwise all rest on the factual allegations the services were rendered by radiologists who used to work for non-Sonoran medical groups, or still do work at non-Sonoran medical groups. But United does not allege that those other groups hold the staffing contract at the facilities where Sonoran billed. For example, United alleges that the other entities, *e.g.*, Southwest Diagnostic Imaging, LLC dba SMIL[1], not Sonoran, are

[1] Indeed, as pointed out in the Motion at p. 18 and not addressed in the Opposition, the website referenced in the Complaint, and upon which the Opposition relies to argue that United has sufficiently alleged that certain doctors, *e.g.*, Dr. Michelle Lai is solely a SMIL doctor describes the radiologists as "contracted radiology Physicians," not employees. *See* https://www.esmil.com/physicians/physicians.php ("SMIL contracts with board-certified Radiologists…"). The court can consider this website because the Complaint incorporates it by reference. *See* Compl. ¶¶ 92, 105, 125, 135. "[I]ncorporation-by-reference is a judicially

providing the services. But this conclusion is based on two facially faulty gaps. First, doctors are entitled to switch medical entities, and even to work for multiple entities. Second, each facility is allowed to choose which radiology group gets to staff the facility, including switching to a new group. Doctors and facilities have these rights even when those choices are not United's preference.

The more logical, albeit more boring, explanation for Sonoran billing United for the services at issue is that Sonoran has the radiology staffing contracts now and has secured the services of the radiologists for staffing radiology at those facilities. United's complaint lacks any particular facts to undercut that boring yet perfectly legitimate reason.

Furthermore, United's own prior allegations in the CA Lawsuit admit that each facility can and does choose to contract with a medical group to staff radiology services there, and the medical group who staffs the facility is the group that provides and should bill for its services, not any other group. (Motion, pgs. 7-8; CA FAC, ¶¶ 39-44). The Opposition fails to address this admission but the Court can and should hold United to it.

United's Complaint, as well as its Opposition, strikingly refuses to engage at all in addressing which medical group entity – i.e., Sonoran or one of the others –holds the staffing contract at the facilities for the bills at issue. Instead, United acts as though a radiologist who ever affiliated with a different medical group must forever affiliate exclusively with that group and never be allowed to work for any other entity. There is zero authority cited by United for this absurd contention that radiologists are indentured for life to their first medical entity.

Indeed, United's own Complaint admits doctors can be affiliated with multiple entities at the same time. For example, the Complaint alleges that one radiologist – Dr. Harvin – acts on behalf of both Stanford Healthcare and Southwest Medical Imaging, LTD. Compl. ¶ 127.

The court can apply its "judicial experience and common sense," *Iqbal*, 556 U.S. at 679, in addition to United's allegations and judicial notice, to reject United's conclusory premise that doctors being affiliated with entities in addition to Sonoran precludes them from

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created doctrine that treats certain documents as though they are part of the complaint itself." *Kohja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018).

acting on Sonoran's behalf.

2. Judicially Noticeable Facts Support the Obvious Alternative Innocent Explanation for Sonoran's Billing

Courts consider judicially noticeable facts outside the four-corners of the Complaint. *U.S. v. Corinthian Colleges*, 655 F.3d 984 (9th Cir. 2011). Judicial notice applies to any fact "that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; **or** (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b) (emphasis added). The Court "need not … accept as true allegations that contradict matters properly subject to judicial notice." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

The Motion cites several judicially noticeable documents showing facts "not subject to reasonable dispute." These facts directly contradict United's threadbare conclusory assertions that (a) Sonoran does not have its own radiologists and is nothing but a "sham entity" that operates only in furtherance of RP's pass-through billing scheme, and (b) that radiologists do not and cannot ever change or add affiliations with new or multiple medical groups.

For example, CMS' publicly available records provide reassignment and revalidation materials for the groups and organizations to which each provider has reassigned the right to bill and be paid by Medicare. Those judicially noticeable documents confirm: radiologists can, and do, affiliate themselves with multiple medical groups. RJN Exs. 12-27.

United asks the Court to ignore these judicially noticeable facts because United says it disputes them. But the legal standard for judicial notice is not whether United disputes the fact, but whether the fact is one that can be ***reasonably*** disputed. *See* Opp. p. 16 (quoting *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) ("[W]e may not, on the basis of evidence outside of the complaint, take judicial notice of facts favorable to Defendants that could reasonably be disputed") (emphasis added). Otherwise, a party could circumvent judicial notice simply by saying "we dispute it" without anything judicially noticeable to support a fact dispute. Parties cannot so easily nullify judicially noticeable facts.

There is no dispute, let alone ***reasonable*** dispute, that CMS' publicly available records

confirm these radiologists have attested to Medicare that they reassigned their billing rights to multiple providers, including among others, to Sonoran. There also is no ***reasonable*** dispute that radiologists can switch medical groups and can affiliate with multiple medical groups. Indeed, this concept is embodied in the Complaint's allegations that Dr. Harvin, is affiliated with at least two non-Sonoran medical entities: (1) Southwest Medical Imaging, LTD and (2) Standard Health Care in California. Compl. ¶ 127.

United also fails to address that it alleged another radiologist, Dr. Jason Barclay-White, was acting on behalf of Sun City Imaging, Ltd., when it is judicially noticeable that Sun City was merged out of existence one month before the alleged service by him was rendered. *See,* Motion, pg. 19, RJN, Ex. 10. Those allegations, accordingly, are paradigmatic examples of instances where the Court "need not … accept as true allegations that contradict matters properly subject to judicial notice." *Sprewell*, at 988.

3. United's Complaint's fails to plead fraud with particularity

Satisfying Rule 9(b) requires the plaintiff to alleged fraud with particularity, *i.e.*, "the who, what, when, where, and how of the misconduct charged." *See* Motion at p. 16 (citing *Kearns v. Ford Motor Co*., 567 F.3d 1120, 1124 (9th Cir. 2009). More is required than just repeating the word "fraud" next to other conclusory allegations; the "plaintiff must set forth an explanation as to why the statement or omission complained of was false or misleading." *Yourish v. California Amplifier*, 191 F.3d 983, (9th Cir. 1999); *see* Motion at pp. 17-18, 21.

But the Complaint did not even identify any specified bill. United cannot, as it tries in Opposition, simply say the conclusion that "because Sonoran is just a sham entity, all claims billed by it were necessarily pass-through billed." Opp. at p. 15. United must have alleged facts with particularity that would render Sonoran a sham entity for all bills. Nothing in the Complaint satisfies that burden. Plus, judicially noticeable fact undercut Untied's conclusory allegations trying to paint a different narrative.

The Court is not required to permit "a plaintiff with a largely groundless claim" to "take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of settlement value." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955,

167 L. Ed. 2d 929 (2007). Rather, particularity is required so that Defendants can know and respond to what they are defending against with precision.

United did not actually identify even one bill with the required particularity, let alone enough to implicate every Sonoran bill. The only two bills that United asserts, identified in the Complaint at paragraphs 84-111, are referenced only at a high level by the rendering physician, procedure, and date. They do not identify the facility, or any unique bill identifier, or other details. *Colonial Sav., FA v. Gulino*, 2010 WL 1996608, at *9 (D. Ariz. May 19, 2010) (Snow, J.). (the complaint must "**sufficiently** provide the time[s], place[s], and date[s] of the alleged misrepresentations.")(emphasis added).[2] The failure to identify the facility, in particular, circumvents the threshold issue that Sonoran, not any other medical group, holds the facility staffing contracts where Sonoran bills. United presumably omitted this required fact, despite admitting its importance at paragraphs 39-44 of the CA Lawsuit, because United did not perform the requisite due diligence with the facilities before launching its latest copycat lawfare against RP.

4. United's NSA Motivation Theory for Sonoran's Billing Is Not Pled, Is Unstuck in Time, and Does Not Cure the Missing Particularity

The Opposition includes a new accusation that RP created Sonoran as part of a scheme to "abuse the NSA IDR process," after RP allegedly "performed financial modeling" showing that it could make more money under the NSA IDR process on an out-of-network basis. Opp. p. 1. The court can reject this contention for at least two reasons. First, United's new "financial modeling" NSA allegation appears nowhere in United's Complaint, is manufactured out of whole cloth, and must be disregarded. Second, the Opposition concedes that Sonoran was

[2] Counts 2 (negligent misrepresentation) fail for the same reasons. *See W.L. Gore & Assocs., Inc. v. GI Dynamics, Inc.*, 2010 WL 5184254, at *11 (D. Ariz. Dec. 15, 2010) (Snow, J.). So too with respect to Count 3, which does "not allege when or where the . . . Defendants entered into an agreement to defraud Plaintiff[s]." *Raposo Enters. Inc. v. 117 Degrees LLC*, 2022 WL 11864942, at *6 (D. Ariz. Apr. 13, 2022). And Count 9, because United had not sufficiently pleaded or otherwise explained when or how RP or Sonoran substantially assisted or encouraged the other to breach any alleged duty. *See Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Tr. Fund*, 38 P.3d 12, 23 (Ariz. 2002).

created in 2019 – i.e., a year before the NSA was enacted in 2020 – and alleges wrongdoing for billing prior to the NSA's implementation date two years later – i.e., 2022. Thus, United's theory would have RP and Sonoran motivated by years-off, impossible to predict future events.

B. United Fails to State a Claim for Vacating NSA IDR Arbitration Awards

United's Complaint and Opposition invoke two grounds for challenging the NSA IDR awards under Section 10(a) of the FAA, which allows vacatur "where the award was procured by corruption, fraud, or undue means," or "where the arbitrators exceeded their powers."

1. United has not adequately pled that any IDR Award was procured by fraud

United's alleged "fraud" to support vacatur is based on the same core theory that a different medical group should have billed for the specific services provided and billed for by Sonoran. For the reasons set forth above, United failed to allege this core fraud with the requisite particularity or at all. This failure alone defeats NSA vacatur. But there's more.

United also must allege facts showing that the purported fraud was "not discoverable upon the exercise of due diligence prior to the arbitration." *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404. The provider associated with a bill is known to United when the bill is submitted and during the NSA process. *See* Motion at p.11 (citing Compl. ¶¶ 73, 76, 89-91 and also RJN Ex. 11 [NUCC Manual]). Thus, if United felt any doctors were with another medical group, then United could have raised that during the NSA IDR process, which provides opportunities for United to raise eligibility challenges at the time. Mot. p. 10, fn. 14.

The Opposition sidesteps this by arguing that "the vast majority of claims are auto-adjudicated." Opp. p. 18. But auto-adjudication does not mean lack of knowledge; auto-adjudication is just United's choice not to set up its systems to consider knowledge United cannot deny having during the NSA process. United knew who the individual rendering providers for bills were when those bills were adjudicated in the NSA IDR process. Therefore, United had a duty to raise eligibility with the IDREs. United cannot put its head in the sand on knowledge it possesses for expediency purposes and then complain that its auto-adjudication decision was not set up to consider and raise what it knew with the IDREs.

Eligibility is a topic within the authority of the IDR arbitrator to consider. United cannot get IDRE awards vacated just because it either didn't raise the issue timely with the IDREs, or worse, did raise the issue but is unhappy with the arbitrator's determination. It is well recognized that "a disappointed party will not be given a second bite at the apple …, consistent with the extremely narrow scope of [the Court's] review of [an] arbitration panel's decision." *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 (9th Cir. 1992). [3]

2. United cannot plead that any IDRE exceeded the scope of its powers

Faced with on-point Ninth Circuit authority regarding the high standard for vacatur pursuant to section 10(a)(4) from 2022, the Opposition inaccurately describes the standards for vacatur pursuant to section 10(a)(4) by reference to *Kyocera Corp. v. Prudential-Bache Trade Servs.*, Inc., where the Ninth Circuit affirmed a district court confirming an arbitration award in the face of the losing party seeking to vacate it pursuant to section 10(a)(4). 341 F.3d 987, 1002–03 (9th Cir. 2003). In actuality, *Kyocera* described Section 10(a)(4) as "extremely limited" review authority." *Id.* at 998. Moreover, the reference in *Kyocera* to Section 10(a)(4) vacatur only when arbitrators "purport to exercise powers that the parties did not intend them to posses," *see* Opp. at p. 21, is consistent with the authority cited by Defendants, *HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, which provides that Section 10(a)(4) vacatur requires that "the arbitrators were aware of the law and intentionally disregarded it." 55 F.4th 1232, 1240–41 (9th Cir. 2022). But the Complaint does not point to any NSA awards here where an NSA IDRE found Sonoran's providers to be in-network and proceeded anyways.

C. United's Other Counts are Derivative of United's Fraud Allegation, and Thus Fail Because United Fails to Allege Any Fraudulent Conduct

United's other causes of action, for negligent misrepresentation and omission (Count

[3] United's allegations of a purported scheme by RP throughout the country in the CA lawsuit in 2023 also contradict its assertions that the alleged fraud was undiscoverable. *See Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986) (refusing to vacate award on grounds that appellant failed to exercise due diligence when it suspected but did not investigate allegedly falsified documents).

2) Civil Conspiracy (Count 3), Money Had and Received (Count 4), State and Federal RICO Violations and Conspiracy (Counts 7, 8, 10, 11), Aiding and Abetting a Tort (Count 9), and Declaratory Relief (Count 12) are all derived from and depend on United pleading fraud with particularity. *See* Motion, pgs. 26-29, Opp. pp. 21-26. For this reason, United's Opposition argues that these counts should survive because United adequately pleaded fraud with particularity. United is wrong, and thus, these other causes of action likewise fail.

Beyond the failures noted above, United's Opposition does not fix the pleading deficiencies plaguing its claims. For example, contrary to United's Opposition, Count 2 fails to satisfy Rule 9(b)'s particularity requirement. Opp. at 19-20; *but see supra* fn. 2.

Count 3 fails for that same reason too, but also because "a wholly owned subsidiary is deemed incapable of conspiring with its parent company," which is precisely what United complains of its opposition. *United States v. IASIS Healthcare LLC*, 2016 WL 6610675, at *15 (D. Ariz. Nov. 9, 2016) (quotation omitted); Opp. at 28. Count 3 also fails based on United's continued instance that "Defendants engaged in this fraud," Opp. at 7, because "a conspiracy claim does not provide another avenue of recovery" if it is "alleged against the person[s] who committed the [alleged] act itself[.]" *Everson v. Everson*, 2011 WL 4801884, *6 (D. Ariz. 2011) (Snow, J.). United's Opposition otherwise confirms that Count 9 fails, because it "alleges the same actions give rise to both the [underlying tort claims] and the aiding and abetting claim[.]" *Ortiz v. Zurich Ams. Ins. Co.*, 2014 WL 1410433, at *3 (D. Ariz. Apr. 11, 2014); *Compare* Opp. at 31, *with* Opp. at 19–23. Finally, United's Opposition insists that its "declaratory judgment claim is properly pleaded." Opp. at 32. But that is nonsensical, because "declaratory judgments are remedies for underlying causes of actions. They are not causes of action in their own right—and therefore cannot be pleaded as such." *Cruz v. Cameron Fin. Group Inc.*, 2024 WL 326957, at *4 (D. Ariz. Jan. 29, 2024).

D. United's RICO Count Is Both Derivative and Lacking an Enterprise

United's discussion of its RICO causes of action (Counts 7, 8, 10, and 11) fare no better. The RICO count also fails for being derivative of a fraud that has not been sufficiently pled.

Moreover, United lacks the requisite additional component of a legally cognizable

RICO "enterprise." United contests Defendants' characterization of United's allegations of a "common purpose" under RICO as "ordinary business conduct and an ordinary business purpose." *See* Opp. pp. 23-24; Motion, pg. 29. United argues that the alleged business conduct was not ordinary because the parties RP and its affiliated medical groups purportedly had the goal of using private equity firms to defraud United. (Opp. pp. 34-24). This attempt to create an "enterprise" among RP, its affiliates and RP's private equity investors fails for multiple reasons. First, United did not allege any of this with particularity. Second, a company having affiliates and investors constitutes routine business activity among them. Third, United's Opposition tacitly concedes that it did not plead a distinct enterprise, Opp. at 10, 19-20, 29, because it "cannot plead around the law that a parent corporation and its subsidiaries cannot generally form a RICO enterprise or that a corporation and its officers, employees and agents cannot generally form a RICO enterprise." *BSA Framing, Inc. v. Applied Underwriters, Inc.*, 2018 WL 11462083, at *9 (C.D. Cal. Feb. 27, 2018); *Yagman v. Kelly*, 2018 WL 2138461, *15 (C.D. Cal. March 20, 2018),

Likewise, "[t]he bare allegation that a series of investors, from time to time, advanced capital to [a corporation] . . . does not demonstrate that those investors formed a coherent entity [with the corporation] that was separate and apart from the [alleged racketeering activity]." *Global Merchant Cash Inc., d/b/a Wall Street Funding v. Rome-Aire Servs., Inc. et al.*, 2024 WL 4515654, at *8 (E.D.N.Y. Oct. 17, 2024); *Id*. ("defendants have failed to allege that the investors were members of the purported enterprise"). Thus, United's pejorative attacks on RP having investors cannot establish the existence of a RICO enterprise. Companies having investors is routine for virtually all businesses.

IV. CONCLUSION

The Court should grant the Motion to Transfer, Stay, or In the Alternative, Dismiss.

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Respectfully submitted,

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