UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Health Care Service Corporation, A Mutual Legal Reserve Company, *Plaintiff,* v. Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC, *Defendants.*	§ § § § § § § § § § § § §	Case No.: 5:26-cv-00022-RWS-JBB

DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RESOLUTION OF DEFENDANTS' RULE 12(B)(1) AND 12(B)(6) MOTION TO DISMISS

John M. Pickett
Texas Bar No. 15980320
LAW OFFICES OF
JOHN M. PICKETT
4122 Texas Blvd.
Texarkana, TX 75503
Telephone: (903) 794-1303
Fax: (903) 792-5098
jpickett@jpickettlaw.com

Matthew L. Knowles (*pro hac vice*) (Lead attorney)
Asseret Frausto (*pro hac vice*)
Carolyn Zaccaro (*pro hac vice*)
MCDERMOTT WILL & SCHULTE LLP
200 Clarendon Street
Boston, MA 02116
Telephone: (617) 535-4000
Fax: (617) 535-3800
mknowles@mcdermottlaw.com
afrausto@mcdermottlaw.com
czaccaro@mcdermottlaw.com

R. Bray McDonnell (*pro hac vice*)
MCDERMOTT WILL & SCHULTE LLP
500 N Capitol Street NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Fax: (202) 756-8087
rmcdonnell@mcdermottlaw.com

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Attorneys for Defendants

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Defendants Neuromonitoring Associates, LLC ("NMA"); Monitoring Associates, LLC; and Physician Oversight, LLC (together, "Defendants") respectfully move to stay discovery pending the Court's ruling on the Defendants' motion to dismiss Plaintiff's Health Care Service Corporation ("HCSC") complaint under Federal Rules of Civil Procedure 12(b)(1) (lack of subject-matter jurisdiction) and 12(b)(6) (failure to state a claim) (Dkt. No. 25).

The Defendants filed their motion to dismiss on April 21, 2026, and their reply is due June 11, 2026. HCSC requested an extension (to which the Defendants assented) through May 28, 2026 for its opposition and also plans to file a sur-reply on June 25, 2026.

I. INTRODUCTION

This is another case in which HCSC seeks review of arbitration rulings under the No Surprises Act ("NSA")—it alleges that the arbitrations that the Defendants won were somehow fraud. Three courts have reached this theory to date, and all three have dismissed each plaintiff's complaint *prior to discovery*—two of them, for lack of subject-matter jurisdiction.[1] The Defendants have moved to dismiss on this ground, and seek to stay discovery pending the Court's determination as to whether it has subject-matter jurisdiction to hear HCSC's claim at all. Additionally, HCSC has moved to dismiss other aspects of the complaint under Rule 9(b). Under Fifth Circuit precedent, "Rule 9(b) has long played [a] screening function, *standing as a gatekeeper to discovery*, a tool to weed out meritless fraud claims sooner than later," and courts in this Circuit must apply "Rule 9(b) to fraud complaints with bite and without apology." *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 185–86 (5th Cir. 2009) (quotations omitted and emphasis

[1] *See Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026); Order, *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-01343 (M.D. Fla. Apr. 16, 2026), Dkt. 105; Memorandum, *UnitedHealthcare of Pa., Inc. v. Northstar Anesthesia of Pa., LLC*, No. 2:25-cv-07187 (E.D. Pa. Apr. 28, 2026), Dkt. 43.

added). HCSC's complaint is one of those meritless fraud claims built on conclusory assertions without the required detail that a plaintiff must offer to proceed to discovery. This Court should enforce Rule 9(b) and stay discovery pending the ruling on the Defendants' motion to dismiss. Likewise, where Congress designed NSA arbitration as an efficient and expedited way to resolve payment disputes, and where Congress *expressly* limited judicial review of these arbitrations, the Court should determine whether there is subject-matter jurisdiction to hear the case at all before HCSC invokes the Court's jurisdiction to conduct discovery.

* * *

In this case, HCSC offers two fraud theories, each of which fails as a matter of law. The first theory invokes the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961–68, to seek review of NSA arbitration awards, but this review is directly prohibited by federal law. The NSA requires insurance companies (like HCSC) and providers of healthcare services (like the Defendants) to negotiate about how much an insurer will pay for a patient's medical care. If negotiations fail, either side can invoke binding arbitration (known as Independent Dispute Resolution, or "IDR") where an arbitrator will determine a reasonable payment.

Unhappy with its results during the IDR process, HCSC and its related Blue Cross entities have begun to flood the courts with collateral attacks on these rulings (four cases in this Court alone).[2] This present case is part of HCSC's litigation campaign. Here, HCSC apparently seeks to overturn *thousands* of awards that Independent Dispute Resolution Entities ("IDREs") have

[2] *See Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, 5:25-cv-00132-RWS (E.D. Tex. 2025); *Health Care Serv. Corp. v. Zotec Partners, LLC*, 5:25-cv-00186-RWS (E.D. Tex. 2025); *Paris Emergency Ctr., LLC v. Blue Cross Blue Shield of Tex.*, 5:24-cv-00002-RWS (E.D. Tex. 2024); *Blue Cross Blue Shield Healthcare Plan of Ga., Inc. v HaloMD, Inc.*, 1:25-cv-02919-TWT (N.D. Ga. 2025); *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD, LLC*, 8:25-cv-01467-KES (C.D. Cal. 2025); *Cmty. Ins. Co. v. HaloMD, LLC*, 1:25-cv-00388-MWM (S.D. Ohio 2025); *Anthem Health Plans of Va., Inc. v. AGS Health, Inc.*, 7:25-cv-00804-RSB-CKM (W.D. Va. 2025).

decided in the Defendants' favor, although it identifies only three of them in its complaint.

To date, every court to rule on this theory has dismissed it at the motion-to-dismiss stage. The fatal flaw in this theory is that federal law and Fifth Circuit precedent holds that "an IDR award 'shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)' of the Federal Arbitration Act ('FAA')." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 274 (5th Cir. 2025), *cert. denied*, No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) ("*Guardian Flight I*") (quoting 42 U.S.C. §§ 300ggg-112(b)(5)(d), 300ggg-111(c)(5)(E)). And the complaint here not only fails to plead facts to meet any of these four scenarios for review under the FAA, it includes allegations that categorically rule them out. It is a brightline rule under the NSA and FAA that the losing side in an arbitration cannot relitigate the matter in court simply by alleging that the other side's arguments were fraudulent, particularly where the losing side knew about and raised the same objections in the arbitration. *See Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.,* 140 F.4th 613, 620 (5th Cir. 2025) ("*Guardian Flight II*"); *Barahona v. Dillard's, Inc.*, 376 F. App'x 395, 397–98 (5th Cir. 2010); *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, 2026 WL 982629, at *8 (C.D. Cal. Apr. 9, 2026).

It is thus not surprising that since the filing of HCSC's complaint, the first three courts to reach the theory have decisively rejected it. *See Anthem*, 2026 WL 982629; Order, *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-01343 (M.D. Fla. Apr. 16, 2026), Dkt. 105; Memorandum, *UnitedHealthcare of Pa., Inc.*, No. 2:25-cv-07187, Dkt. 43. That emerging consensus underscores the Defendants' motion to dismiss: there is "no support in the law" for HCSC's claims, "so [Defendants'] motion to dismiss will likely be granted." *Caroselli v. Serv. First Mortg. Co.*, 2025 WL 2161427, at *1 (E.D. Tex. July 30, 2025). And where the weight of

the law is this clear, "[t]he circumstances . . . are exceptional and warrant a stay." *Id.* That is especially true here, where the Defendants seek dismissal based on the Court's lack of subject-matter jurisdiction. *See e.g.*, *Conquest v. Camber Corp.*, 2014 WL 172500, at *1–2 (W.D. Tex. Jan. 13, 2014) (granting stay of discovery where "the need for discovery would be eliminated because the Court would not have jurisdiction"); *Smith v. Potter,* 400 F. App'x 806, 813 (5th Cir.2010) (affirming district court's decision to stay discovery when pending motion to dismiss addressed issues "largely legal rather than factual in nature"); *Laufer v. Patel*, 2021 WL 327704, at *2 (W.D. Tex. Feb. 1, 2021) ("Because standing is a threshold jurisdictional requirement, the Court agrees with Defendants that discovery should be stayed until the District Court has determined whether it has jurisdiction over this case."); *Lowery v. Mills*, 2023 WL 9958230, at *2 (W.D. Tex. Aug. 9, 2023) ("[B]ecause the parties dispute whether there are jurisdictional issues in this case, the Court finds it would be premature to allow discovery to commence until this threshold issue is resolved.").

HCSC's second theory is also barred by pleading rules. It asserts that NMA, after its affiliates purchased intraoperative monitoring ("IOM") companies from several doctors, has paid unidentified incentives to those doctors in exchange for their continued business. But all of the material allegations are made upon information and belief. They do not include facts sufficient to state a claim under Federal Rule of Civil Procedure 8, let alone the heightened pleading standard in Federal Rule of Civil Procedure 9(b). The Fifth Circuit has mandated that "the who, what, when, and where must be laid out before access to the discovery process is granted." *Preston L. Firm, L.L.P. v. Mariner Health Care Mgmt. Co.*, 2009 WL 10680007, at *3 (E.D. La. June 10, 2009), (emphasis in original) (quoting *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997)), *aff'd in part sub nom. Preston L. Firm, L.L.C. v. Mariner Health Care Mgmt. Co.*, 622

F.3d 384 (5th Cir. 2010). "This Court must comply with the Fifth Circuit's mandate" by staying discovery—HCSC "cannot engage in discovery to fulfill the basic pleading requirements of Rule 9(b)." *Id*.

Thus, there is good cause to stay discovery pending resolution of Defendants' motion to dismiss. Defendants' motion rests on strong legal foundations, as discussed below and as recognized by several other district courts who have dismissed similar claims under Rule 12(b)(1). And the burden of discovery here would be significant. HCSC—though citing barely a handful of supposed examples—purports to claim that there are "many thousands" of disputes for which it seeks a remedy here. *See* Compl. ¶ 195. The lack of specificity combined with the sheer volume demonstrates decisively the wide breadth of discovery sought and the heavy burden that would be incurred to respond. On the other hand, a stay would cause little, if any, prejudice to HCSC. Given the Fifth Circuit's clear admonition that Rule 9(b) is a "gatekeeper to discovery" for those claims which must satisfy it, *Grubbs*, 565 F.3d at 185, Defendants respectfully request this Court stay discovery until it determines the sufficiency of HCSC's complaint.

II. LEGAL STANDARD

Where a defendant challenges subject-matter jurisdiction, and there are statutory bars on review or similar immunities from suit, the burden to show cause for discovery falls on the plaintiff. "As the party opposing dismissal and requesting discovery, the plaintiff[] bears the burden of demonstrating the necessity of discovery." *Davila v. United States*, 713 F.3d 248, 264 (5th Cir. 2013) (citing *Freeman v. United States*, 556 F.3d 326, 341–42 (5th Cir.2009)). "This is particularly true where the party seeking discovery is attempting to disprove the applicability of an immunity-derived bar to suit because immunity is intended to shield the defendant from the burdens of defending the suit, including the burdens of discovery." *Freeman*, 556 F.3d at 342. And a plaintiff "is not entitled to jurisdictional discovery if the record shows that the requested

discovery is not likely to produce the facts needed to withstand a Rule 12(b)(1) motion." *Id.*

As a general matter, district courts have "broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." *Caroselli*, 2025 WL 2161427, at *1 (quoting *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987)); *see also Dougherty v. U.S. Dep't of Homeland Sec.*, 2023 WL 6123106, at *7 n.39 (5th Cir. Sept. 19, 2023) (quoting same in finding no abuse of discretion in staying discovery pending motion-to-dismiss resolution). Indeed, under Rule 26(c), a "court may stay discovery for 'good cause.'" *Fujita v. United States*, 416 F. App'x 400, 402 (5th Cir. 2011). Courts within the Fifth Circuit have determined that good cause exists "where the disposition of a motion to dismiss might preclude the need for the discovery altogether thus saving time and expense." *Armstrong v. Cumberland Acad.*, 2021 WL 2784296, at *2 (E.D. Tex. Mar. 22, 2021) (internal quotation marks omitted). In making this assessment courts consider: "(1) the breadth of discovery sought; (2) the burden of responding to such discovery; and (3) the strength of the dispositive motion filed by the party seeking a stay." *Id.* (citation omitted) Not all factors need to be met—courts grant stays of discovery based solely on the strength of the dispositive motion. *Id.* (granting stay of discovery based solely on the fact that defendant's motion to dismiss "is a strong one").

In assessing any harm produced by a discovery stay, courts have found that "meager harm" to the plaintiff is "produced by such a temporary stay at the outset of [a] case" where discovery is not necessary to the resolution of a motion to dismiss. *E.g.*, *Conquest*, 2014 WL 172500, at *1. Temporary stays of discovery are thus appropriate when balancing that "meager harm" to the plaintiff against the prospect that legal prohibitions require that a defendant's motion to dismiss be granted, thereby eliminating entirely the need for such discovery. *Id.*

III. ARGUMENT

A. Defendants' motion to dismiss has a significant likelihood of success.

As made clear by three courts that have decisively rejected the same theories HCSC raises here, HCSC's claims are barred by a federal statute that limits review of IDR arbitration awards. The Defendants' motion to dismiss therefore has a significant likelihood of success as to all of HCSC's NSA claims. *Armstrong*, 2021 WL 2784296, at *2 (finding pending motion to dismiss to be a "strong one" where "two recent and analogous federal court decisions" support defendant's argument that it was "immune from suit").

First, this Court lacks subject-matter jurisdiction over HCSC's IDR theory because Congress restricted judicial review of IDR awards, except in the narrow circumstance that a plaintiff moves to vacate the award under 9 U.S.C. § 10, subsections (1) through (4). HCSC fails to plead facts that show that any of these exceptions apply, and indeed plead facts that rule out these criteria. And HCSC's attempt to circumvent this narrow review standard using RICO and state-law claims is simply an impermissible collateral attack on the final IDR award.

As noted, the courts nationwide that have been flooded with similar suits by HCSC and its related entities have rejected this approach. In the first case to reach a ruling, *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, the Blue Cross plaintiffs there alleged the exact same theory of liability as the Blue Cross plaintiff here: that providers allegedly committed fraud by submitting false attestations of eligibility and submitting payment offers higher than plaintiffs deemed appropriate. *Anthem*, 2026 WL 982629, at *4. The plaintiffs in *Anthem* brought virtually identical claims as here: vacatur, RICO, fraud, and negligent misrepresentation. *Id.* at *1–2. But the court rejected these theories in their entirety and dismissed them for lack of subject-matter jurisdiction. It held that the plaintiffs failed to meet the test for vacatur under the FAA where, as here, they "objected to eligibility for all the sample determinations identified in the" complaint but

lost on this issue at arbitration, essentially "plead[ing] itself out of court." *Id.* at *7–9. And the court held that it lacked jurisdiction to review the awards under other theories, such as RICO, due to the NSA's jurisdictional bar. *Id.* at *9–10.

In the second case, *Aetna Health Inc. v. Radiology Partners, Inc.*, the court similarly rejected an insurance company's request to relitigate IDR arbitration awards that it called "fraud" based on arguments that it raised or could have raised during the arbitration. Order at 8–9, *Aetna*, No. 3:24-cv-01343. It likewise rejected the insurance company's effort to use other statutes and causes of action "to end-around the NSA and FAA strictures," and held that use of state law to do so is preempted. *Id.* at 9–10.

In the third case—decided after the Defendants filed their pending motion to dismiss—*UnitedHealthcare of Pennsylvania, Inc. v. Northstar Anesthesia of Pennsylvania, LLC*, the court granted a healthcare provider's motion to dismiss, holding that the federal court lacked subject-matter jurisdiction to review an IDR arbitration award under a state fraud theory (just like the one HCSC offers here in count II of its complaint). Memorandum at 8, *UnitedHealthcare of Pa., Inc.*, No. 2:25-cv-07197. Notably, the court found that UnitedHealthcare "ma[de] essentially the same arguments as . . . rejected in *Anthem*." *Id.* at 21. And guided by the *Anthem* court's "thoughtful analysis," it concluded that "UnitedHealthcare is trying to evade Congress's policy choices in limiting judicial review because UnitedHealthcare believes the [NSA] leaves it with an inadequate remedy." *Id.* at 22. The court had "no basis for subject matter jurisdiction to resolve an insurer's unhappiness with a Congressional mandate as some form of policy fiat." *Id*. at 2. That court also emphasized that where an insurance company thinks that an IDR arbitrator erred in finding the dispute was eligible for arbitration, the remedy is to proceed through an administrative process to seek review. *See id.* at 12 ("The Departments [of Health and Human Services, Labor and the

Treasury] determined jurisdictional errors should be corrected by reopening a dispute to ensure compliance with the [NSA]'s requirements." (internal quotations omitted)).

The Defendants also point to the consequences that would follow if HCSC's claims are not dismissed. The *Anthem* court underscored these consequences. It emphasized that "[i]f the Court were to adopt Plaintiffs' position, then nearly every eligibility determination disputed by an IDR participant would be subject to review in federal court. That would be inconsistent with the NSA's creation of a streamlined IDR process for resolving surprising billing disputes and its limitation on judicial review." *Anthem*, 2026 WL 982629, at *8; *see also id.* at *9 ("Plaintiffs' proposed reading of 42 U.S.C. § 300gg-111(c)(5)(E)(i), which would impose *no* limits on judicial review of IDRE's eligibility determinations, would be clearly contrary to the streamlined dispute resolution process that Congress intended when it created the NSA's IDR process." (emphasis in original)). In another HCSC case, the Fifth Circuit held that IDR arbitrations should not be reviewed in court, unless the strict and narrow standards of the FAA are met. *Guardian Flight I*, 140 F.4th at 277 (recognizing that Congress never intended to "open the floodgates of litigation" when it created the IDR process). These narrow standards have plainly not been met here. Defendants are therefore strongly likely to prevail in their motion to dismiss.

Second, the Defendants are likely to prevail on the dismissal of HCSC's kickback theory of claims. As to this theory, HCSC only alleges the following:

- that one of the Defendants' *competitors* used a supposedly non-compliant arrangement where surgeons benefited financially from referrals for IOM services, because the surgeons owned the LLC to which they were referring IOM work (*E.g.*, Compl. ¶¶ 59–62);
- that some surgeons abandoned this approach after a government agency opined that it was not compliant with federal law, sold their IOM LLCs, and instead began using NMA to

provide IOM services on the grounds that NMA's alternative approach *complies* with the law (Compl. ¶¶ 47–49);

- but, upon information and belief, the surgeons are wrong and NMA's arrangement also violates "Kickback Laws and Policies" because NMA must somehow be paying kickbacks to the surgeons, or paying too much to acquire certain LLCs affiliated with these physicians—yet HCSC does not allege how much NMA paid, why it was too much, or why purchasing an ongoing business would violate Texas law (Compl. ¶¶ 49–51, 65, 78, 91, 104). In short, it asks the Court to infer that the only thing that could cause the physicians to move their business from their LLCs to NMA would be kickbacks; and
- that by billing HCSC for the IOM services that the Defendants (undisputedly) provided to patients, the Defendants committed wire fraud and violated RICO (Compl. ¶ 273).

That is it. All these allegations are made upon information and belief. They therefore do not include facts sufficient to state a claim under either Rule 8 or the heightened pleading standard in Rule 9(b). While HCSC cites several Texas statutes that it claims prohibit the kickback scheme it alleges, these statutes lack a private right of action. Instead, HCSC invokes common-law fraud and RICO, but it does not identify with specificity facts or statements that show fraud. And while HCSC speculates that Defendants must be paying improper inducements to the physicians, it does not plead any facts to support this speculation.

The Supreme Court held in *Bell Atlantic Corp. v. Twombly* that a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level" and must show why there is not a lawful alternative for the defendant's conduct. 550 U.S. 544, 555, 567 (2007). This complaint fails under that rule—the Defendants therefore have a strong likelihood of success on these claims as well. As the Fifth Circuit has emphasized, "the who, what, when, and where

must be laid out *before* access to the discovery process is granted." *Williams*, 112 F.3d at 178 (emphasis in original). This mandate therefore requires a stay of discovery here.

B. Allowing discovery to continue would impose undue burden and expense on Defendants.

HCSC seeks vacatur of thousands of awards that IDREs have decided in Defendants' favor. *See* Compl. ¶ 195. As an initial matter, HCSC did not say exactly which IDRs it is challenging, it only alleges that "many thousands" were fraudulent, *id.*, leaving a potentially boundless review of each IDR between the parties. Additionally, relitigating each individual proceeding will require examining dispute-specific documents and records containing individual patient claim information. Indeed, HCSC's own complaint includes screenshots of redacted patient information for the three IDR award examples it cites. *See, e.g.*, *id.* ¶¶ 149, 158, 162, 170, 184, 190. Discovery in this case will therefore inevitably involve burdensome review efforts and processes to protect against violations of the Health Insurance Portability and Accountability Act ("HIPAA") and apply any necessary redactions. *See* Ex. A, Decl. ¶ 9–10.

Discovery will also be burdensome because it will require review of attorney-client privileged communications and attorney work product. Indeed, Defendants' internal documents related to the IDR proceedings central to this case involve communications with Defendants' attorneys regarding their internal IDR processes and strategies. These arbitration proceedings are entitled to the same attorney-client privilege and work product protections as the ones afforded in litigation. *See Caringal v. Karteria Shipping, Ltd.*, 2001 WL 874705, at *1 (E.D. La. Jan. 24, 2001) ("[D]ocuments created in preparation for arbitration also benefit from the same [work product] protections").

To boil this down: Congress set up NSA arbitration as a low-cost and efficient process to resolve payment disputes. *See Guardian Flight I*, 140 F.4th at 273. It would make no sense to tear

up the law reflecting that policy choice by allowing a plaintiff to re-litigate every one of the arbitrations in federal court merely pointing to three examples where the plaintiff lost, and calling them "fraud."

* * *

Further, discovery as to HCSC's kickback-related claims represents another significant burden and expense placed on Defendants. HCSC does not identify the number of surgeons supposedly receiving kickbacks from NMA; it merely states that NMA pays kickbacks to "surgeons" and lists four surgeons, and assumes (on information and belief) that they must have received kickbacks. *See* Compl. ¶¶ 50–52, 58–70, 71–83, 84–96, 97–109. Reviewing only those claims tied to the four surgeons named in the complaint would require reviewing 465 claims. *See* Compl. ¶¶ 69, 82, 95, 108. And, since HCSC has failed to identify the other surgeons it claims received kickbacks, NMA would need to take on the further burden of attempting to acquire that information from HCSC or conduct a time-intensive search covering *all* its business relationships for IOM services in Texas to identify responsive documents. *See* Ex. A, Decl. ¶ 13, 15. And all that work is merely to *identify* potentially responsive documents; further review will be necessary to ensure compliance with HIPAA and state privacy laws. Ex. A, Decl. ¶ 10, 14. Even if NMA had the names of all the surgeons, this would be a time-intensive, burdensome endeavor—armed only with what information HCSC has bothered to give, the kickback-related discovery would be a meandering, time-intensive wild goose chase.

In sum, discovery will require a time-intensive review process, privilege logging, and potential discovery and privilege disputes before the Court. All of this weighs in favor of a stay of discovery here. Memorandum at 5, *Hicks v. United States, et al*., No. 3:24-cv-00395-SDD-RLB (M.D. La. Sept. 11, 2025), Dkt. 28 (finding a stay to be warranted where plaintiffs sought "large

amounts of information, which may take some time for Defendants to gather").

C. A short stay would not prejudice HCSC.

Any harm from a temporary discovery stay pending resolution of Defendants' motion to dismiss will be "meager," if not non-existent, in this case. *See, e.g.*, *Conquest*, 2014 WL 172500, at *1. Here, no discovery between the parties is needed for the Court to evaluate and decide the legal issue of where the Court has jurisdiction to review the IDR awards under the FAA or under alternative theories, such as RICO. *Id*. at *2 (finding harm to plaintiff would be "meager" and holding a temporary stay is warranted "[a]bsent the necessity to develop a factual basis" to resolve "the legal issues addressed in Defendant's Motion to Dismiss."). And as to its kickback theory of claims, HCSC is not entitled to rely on discovery to supplant the missing details of its claim under Rule 9(b). *Preston*, 2009 WL 10680007, at *3. HCSC therefore cannot be prejudiced by a stay of discovery where it is not entitled to discovery on this point in the first place.

Thus, "[g]iven the nascent nature of this matter, Plaintiff will not be prejudiced by staying the proceedings." *Taj Constr., Inc. v. Architectural Prods. Co.*, 2008 WL 11334037, at *2 (W.D. Tex. Nov. 21, 2008). Courts within the Fifth Circuit regularly stay discovery where, as here, the case is still in the very early stages of litigation. *See id.* ("Given the early stage of litigation, a stay would not prejudice Plaintiff."); *Lexos Media IP LLC v. MSC Indus. Direct Co.*, 2023 WL 11967299, at *5 (N.D. Tex. Sept. 6, 2023) ("[A] motion to stay filed during the early stages of litigation is viewed favorably. The early stage of the proceedings in this case favors a stay."); *Pryor v. City of Pontotoc*, 2024 WL 495934, at *1 (N.D. Miss. Feb. 8, 2024) ("Accordingly, given the early stage of litigation and the pending dispositive motion for judgment on the pleadings, a stay of the case management conference and discovery in this cause is warranted.").

By contrast, the Defendants will suffer "undue burden [and] expense" if discovery proceeds and the Court ultimately finds no subject matter jurisdiction or dismisses the complaint on the

other overarching legal grounds raised by Defendants' motion to dismiss. *See Caroselli*, 2025 WL 2161427, at *1. And "discovery is not justified when cost and inconvenience will be its sole result," as is the case here where Defendants motion to dismiss is likely to be granted. *Id*. (cleaned up).

IV. CONCLUSION

For the above reasons, the Court should stay discovery pending the Court's resolution of Defendants' Rule 12(b)(1) and 12(b)(6) motion to dismiss Plaintiff's complaint.

Dated: May 05, 2026

Respectfully submitted,

/s/ Matthew L. Knowles

Matthew L. Knowles (*pro hac vice*) (Lead attorney)
Asseret Frausto (*pro hac vice*)
Carolyn Zaccaro (*pro hac vice*)
MCDERMOTT WILL & SCHULTE LLP
200 Clarendon Street
Boston, MA 02116
Telephone: (617) 535-4000
Fax: (617) 535-3800
mknowles@mcdermottlaw.com
afrausto@mcdermottlaw.com
czaccaro@mcdermottlaw.com

R. Bray McDonnell (*pro hac vice*)
MCDERMOTT WILL & SCHULTE LLP
500 N Capitol Street NW
Washington, D.C. 20001
Telephone: (202) 756-8000
Fax: (202) 756-8087
rmcdonnell@mcdermottlaw.com

Attorneys for Defendants

John M. Pickett
Texas Bar No. 15980320
LAW OFFICES OF JOHN M. PICKETT
4122 Texas Blvd.
Texarkana, TX 75503
Telephone: (903) 794-1303
Fax: (903) 792-5098
jpickett@jpickettlaw.com

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Defendants and Plaintiff have complied with the meet and confer requirement in Local Rule CV-7(h) and conferred on May 5, 2026 via zoom, regarding the relief sought by this motion. Counsel for Plaintiff stated that Plaintiff opposes the relief requested in this motion.

/s/ John M. Pickett
John M. Pickett

/s/ Matthew L. Knowles
Matthew L. Knowles

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF filing system, which will generate and send an e-mail notification of said filing to all counsel of record on May 5, 2026.

/s/ Matthew L. Knowles
Matthew L. Knowles

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Health Care Service Corporation, A Mutual Legal Reserve Company, *Plaintiff,* v. Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC, *Defendants.*	§ § § § § § § § § § § § §	Case No.: 5:26-cv-00022-RWS-JBB

DECLARATION OF ROMMY FOTEH IN SUPPORT OF DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RESOLUTION OF DEFENDANTS' MOTION TO DISMISS UNDER RULES 12(B)(1) AND 12(B)(6)

I, Rommy Foteh, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Rommy Foteh. I am over eighteen years of age, of sound mind, and capable of making this declaration. The matters stated herein are true and correct based on my personal knowledge.

2. I am the President and Chief Operating Officer ("COO") of Neuromonitoring Associates, LLC ("NMA"). As President and COO, I am responsible for directing NMA's day-to-day operations, including services related to the federal Independent Dispute Resolution ("IDR") process under the No Surprises Act, the Texas IDR process, and other state IDR processes.

3. As president and COO of NMA, I reviewed the complaint filed by Plaintiff Health Care Service Corporation ("HCSC") on February 18, 2026, against several Defendants, including NMA. Pertinent here, I carefully reviewed HCSC's two theories of allegations and declare the following in support of the Defendants' Motion To Stay Discovery Pending Resolution of

Defendants' Motion to Dismiss Under Rules 12(B)(1) And 12(B)(6).

4. *First*, I reviewed HCSC's allegation that Defendants have procured "many thousands of awards for ineligible services or items in the IDR process." Compl. ¶ 195. Significantly, other than the limited "examples" HCSC lists in the complaint, HCSC does not provide sufficient information for me or other NMA employees to identify the "many thousands" of purportedly ineligible claims (and we dispute that there are such claims).

5. HCSC also failed to provide sufficient information for me or other NMA employees to identify and collect documents that may be relevant to those thousands of allegedly ineligible claims.

6. Nonetheless, based on my responsibilities and experience as President and COO of NMA, I know that, as a general matter, even if HCSC provides NMA with sufficient information to identify the thousands of alleged claims, trying to identify these claims would be burdensome. Specifically, it would require substantial time and resources (likely several hours per claim, at a minimum) to collect and review documents that may be relevant to the "many thousands" of claims.

7. Reviewing documents for the "many thousands" of claims would be so arduous, that I would need the assistance from other NMA employees. But there are a limited number of employees who have the ability or knowledge to assist in that search. And even then, this limited number of employees has other responsibilities critical to and required for NMA's day-to-day operations. So, it would be difficult for them to assist with this review in the first place.

8. For example (and without agreeing that review is required for all IDR disputes allegedly at issue and without waiving Defendants' rights to object to future discovery), I attempted to identify and collect documents related to the IDR dispute "examples" cited in the

complaint. *See, e.g.*, Compl. ¶¶ 155–166. Identifying and reviewing the documents related to each dispute took approximately 1-2 hours each. Further complicating things is that HCSC often provides payment and claims information in batched forms, with data from multiple claims combined together in one document.

9. Beyond identification and review, NMA's obligations under the Health Insurance Portability and Accountability Act ("HIPAA") and individual client agreements require additional review for protected health information and potential redactions, as well as notification to individual clients if protected health or other information may be disclosed. While I do not know yet what HCSC would seek, I expect that responding to such requests would take dozens of hours of work per claim.

10. Assuming at least several hours for each of the alleged disputes, and assuming that HCSC will seek discovery about the "many thousands" of purportedly illegitimate claims, I estimate that providing all of the information for these claims will take *thousands* of person-hours.

11. *Second*, I have also reviewed HCSC's allegation that Defendants are paying kickbacks to surgeons who order intraoperative neuromonitoring ("IOM") services from NMA and its affiliates. *See* Compl. ¶¶ 50–51. We strongly dispute these allegations. Again, other than the four "examples" provided in the complaint, HCSC does not provide sufficient information for me or NMA employees to identify the unknown number of surgeons supposedly receiving improper payments, or the number of claims with respect to each surgeon that are supposedly a part of the alleged "kickback scheme." *E.g.*, Compl. ¶ 57.

12. Based on my responsibilities and experience at NMA, I know that, as a general matter, even after NMA receives sufficient information to identify the as-yet unknown number of surgeons and related claims, it would also require substantial resources to collect and review

documents that may be relevant to this allegation.

13. Again, efforts to obtain documents related to this purported "kickback scheme" would require the assistance from other NMA employees. And there are also a limited number of employees who have the ability or knowledge to assist in that search, and they also have other responsibilities critical to and required for NMA's day-to-day operations.

14. Accordingly, gathering information (including claims and billing data) for every claim involving each IOM service for each of thousands of patients would involve, at a minimum, hundreds or thousands of hours of work.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 5, 2026

Signed by:
473F2F557F434C6...
Rommy Foteh

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Health Care Service Corporation, A Mutual Legal Reserve Company, *Plaintiff,* v. Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC, *Defendants.*	§ § § § § § § § § § § § §	Case No.: 5:26-cv-00022

[PROPOSED] ORDER

Pending before the Court is Defendants' Motion to Stay Discovery Pending Resolution of Defendants' Rule 12(b)(1) and 12(b)(6) Motion to Dismiss. Having considered the relevant pleadings, filings, and argument of counsel, it is the Court's opinion that the Motion should be **GRANTED** in all respects.

It is therefore **ORDERED** that all discovery in this case is hereby stayed pending the Court's resolution of Defendants' Rule 12(b)(1) and 12(b)(6) Motion to Dismiss filed in this case.

IT IS SO ORDERED.

Dated: _____

_____
Robert W. Schroeder III
United States District Judge