IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HIGHMARK INC., *Plaintiff*, v. REMOTE NEUROMONITORING PHYSICIANS, PC, and SPECIALTYCARE IOM SERVICES, LLC, *Defendants*.	)	Case No. 2:26-cv-01214

PLAINTIFF HIGHMARK INC.'S BRIEF IN OPPOSITION TO DEFENDANTS REMOTE NEUROMONITORING PHYSICIANS, PC AND SPECIALTYCARE IOM SERVICES, LLC'S MOTION TO DISMISS

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I. INTRODUCTION

The No Surprises Act was designed to protect patients and to resolve payment disputes between providers and insurers efficiently and with finality. But Congress did not strip courts of power to vacate awards procured through fraud or issued in excess of an IDRE's authority. It expressly preserved both grounds. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); 9 U.S.C. § 10(a)(1), (4). Highmark alleges both here.

Remote Neuromonitoring Physicians, PC ("RNP") and SpecialtyCare IOM Services, LLC ("SpecialtyCare") asserted many arguments in their motion to dismiss, but they tellingly ignore the central factual allegation of this case: together, they procured hundreds of IDR awards by knowingly initiating ineligible disputes during the statutory 90-day cooling-off period. This was done despite individualized warnings in prior determinations expressly identifying the date each prohibition expired and the statutorily required cooling off period. Rather than confront that alleged pattern, Defendants retreat to a series of procedural doctrines and ad hominem attacks to distract the Court from the well-pleaded allegations in the Complaint.

Defendants' arguments collapse under scrutiny. Their contention that the NSA bars all judicial review except for awards procured by bribery or perjury reads into the statute limits Congress did not impose. Congress was clear; awards procured through fraud or determinations made in excess of the IDRE's authority are subject to vacatur. Defendants' claim that Highmark could have detected the cooling-off violations in real time ignores the compressed three-business-day objection period, the volume of disputes, and the forensic analysis required to identify the pattern across hundreds of overlapping filings. Their assertion that eligibility determinations are unreviewable mistakes the nature of the claim: Highmark does not ask the Court to second-guess an IDRE's payment selection, but to enforce the statutory limit that prohibited the disputes from proceeding at all.

Defendants cite a number of other cases in the NSA context to argue that "[e]very court that has addressed a similar payor-side effort has rejected it." Br. at 1. However, Defendants' reliance on other payor-side dismissals is misplaced. The very decisions cited by Defendants recognized that vacatur is an appropriate remedy where an IDR award is procured by fraud or where the IDRE exceeded its authority, which is exactly what Highmark alleges here. The critical distinction is that in those cases, the insurers knew the facts underlying their eligibility objections and had an opportunity to raise them during IDR, but lost on the merits. Here, by contrast, Highmark alleges a pattern of cooling-off violations that was not reasonably detectable within the compressed objection windows. Defendants cannot manufacture immunity by burying a systematic pattern under an avalanche of filings that obscured the misconduct one dispute at a time.

The Complaint identifies specific determinations, procedure codes, initiation dates, and individualized cooling-off notices. It alleges a recurring pattern of violations extending over months, with new disputes initiated days—sometimes one day—after determinations expressly warning Defendants that they were required to wait 90 days. These are not isolated eligibility mistakes; they are the hallmarks of a deliberate scheme to exploit the IDR process before Highmark or the IDREs could identify the ineligibility. The NSA's safeguards against fraud exist precisely for cases like this one.[1]

[1] Defendants raise what appear to be arguments in support of dismissal in their factual background section, including that the cooling-off period was not triggered because Highmark acted as a third-party administrator and the underlying group health plans, rather than Highmark, were the relevant "other party," Br. at 5, and that Exhibit A to Highmark's complaint does not "pair each scheduled matter" with an earlier IDR determination, Br. at 7. Arguments raised in a facts section but not asserted in an argument section are waived. *See Nagle v. Alspach*, 8 F.3d 141, 143 (3d Cir. 1993) ("When an issue is…not pursued in the argument section of [a] brief, the appellant has abandoned and waived that issue[.]"); *Yates Real Est., Inc. v. Plainfield Zoning Bd. of Adjustment*, 404 F. Supp. 3d 889, 931 (D.N.J. 2019) ("Issues not properly raised in the argument section of a brief are deemed waived."). Even without waiver, Defendants' "same other party" argument raises a fact issue and does not justify dismissal of Highmark's cooling-off theory as a whole, and their point about Exhibit A is refuted by the totality of Highmark's Complaint, which pleads detailed factual narrative regarding Defendants' fraud in specific disputes, complete with the very information Defendants contend is missing. Moreover, the IDR determinations identified in the Complaint expressly told Defendants that they could not initiate another dispute "involving Highmark" for the same or similar services during the 90-day period. Compl. ¶¶ 37-43.

II. LEGAL STANDARD

Under Rule 12(b)(6), the Court accepts well-pleaded factual allegations as true and draws reasonable inferences for Highmark. *Smith v. Strom Eng'g Corp.*, Civil Action No. 19-147, 2019 U.S. Dist. LEXIS 198522, at *3 (W.D. Pa. Nov. 14, 2019). Rule 9(b) requires a plaintiff to plead the circumstances constituting fraud with particularity—the "who, what, when, where, and how"—but permits malice, intent, knowledge, and other mental states to be alleged generally. Fed. R. Civ. P. 9(b); *United States ex rel. Bookwalter v. UPMC*, 946 F.3d 162, 168, 176 (3d Cir. 2019). Rule 9(b) applies to the circumstances constituting fraud, not to distinct elements governed by Rule 8's ordinary plausibility standard. *See Alpizar-Fallas v. Favero*, 908 F.3d 910, 919 (3d Cir. 2018). The rule is flexible: it does not require the date, time, place, and content of every allegedly false transaction where the complaint supplies particular details of the scheme and reliable indicia of misconduct. *See Bookwalter*, 946 F.3d at 176; *Foglia v. Renal Ventures Mgmt., LLC*, 754 F.3d 153, 156–58 (3d Cir. 2014). To the extent Defendants frame their arguments under Rule 12(b)(1), the Third Circuit has "repeatedly cautioned against allowing a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction to be turned into an attack on the merits" and instructs that where jurisdiction and the merits are "so intertwined," courts should find jurisdiction and apply 12(b)(6). *Davis v. Wells Fargo*, 824 F.3d 333, 348 (3d Cir. 2016).

III. ARGUMENT

A. HIGHMARK STATES A CLAIM FOR VACATUR (COUNT I)

The NSA expressly permits judicial review of IDR determinations on the grounds specified in Sections 10(a)(1)-(4) of the Federal Arbitration Act ("FAA"). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Those grounds include an award "procured by corruption, fraud, or undue means" or an arbitrator that "exceeded [its] powers." 9 U.S.C. § 10(a)(1), (4). Highmark plausibly alleges both.

1. Highmark Plausibly Alleges That Defendants Procured IDR Awards Through Fraud Under Section 10(a)(1)

To vacate an award based on fraud, a party must show: (1) "that there was a fraud in the arbitration, which must be proven with clear and convincing evidence"; (2) "that the fraud was not discoverable through reasonable diligence before or during the arbitration"; and (3) "that the fraud was materially related to an issue in the arbitration." *France v. Bernstein*, 43 F.4th 367, 378 (3d Cir. 2022). Although the ultimate burden is clear and convincing evidence, that burden does not alter the pleading standard. At this stage, Highmark need only plausibly allege facts satisfying those elements, with the circumstances constituting fraud pleaded with the particularity required by Rule 9(b). *See* Section III.B.

Two aspects of *France* are particularly important here. "[R]easonable diligence does not require parties to assume the other side is lying," *id.* at 380, and materiality is "relatively forgiving." The movant "need not demonstrate that the arbitrator[] would have reached a different result," but only show a "nexus between the alleged fraud and the decision made by the arbitrator." *Id.* at 381 (alteration in original) (quoting *Odeon Cap. Grp. LLC v. Ackerman*, 864 F.3d 191, 196 (2d Cir. 2017)). Highmark plausibly alleges each element.

a) <u>The Complaint Plausibly Alleges Fraud in the IDR Proceedings</u>

The Complaint alleges specific false representations in identified IDR proceedings, together with a broader pattern supporting a plausible inference that the misconduct was knowing. *See* Compl. ¶¶ 39-62, Dkt. No. 1. Defendants repeatedly initiated IDR disputes during the statutory 90-day cooling-off period and falsely represented that those disputes were eligible to proceed, with the express design of defrauding Highmark. The volume and pace of their false attestations is the point—Highmark and the IDREs could not detect the alleged fraud within the limited time available.

The timing alleged supports an inference that these were not innocent or isolated eligibility mistakes. On May 3, 2023, for example, Defendants obtained an IDR payment determination for procedure code 95938 (DISP-214789), triggering a 90-day cooling-off period through at least August 1, 2023. Compl. ¶ 43(a). The determination letter expressly warned Defendants of the restriction. *Id.* The *next day*, Defendants initiated two more disputes for that code. *Id.* ¶ 43(b). After another determination on May 8, and another cooling-off warning, they initiated additional disputes. *Id.* ¶ 43(b)-(c). And after receiving yet another determination for the same code on July 10, and another cooling off warning, Defendants initiated another dispute on July 11. *Id.* ¶ 43(d). This is just one example of the alleged scheme.

The repeated pattern alleged, coupled with the individualized notice provided in the preceding determinations, supports an inference that the eligibility attestations were knowing, not mistaken. Defendants continued to initiate barred disputes even after receiving determinations expressly notifying them of the applicable cooling-off period. And because those representations were made across separate IDR proceedings, the broader pattern was difficult to detect one dispute at a time. *See State Farm Mut. Auto. Ins. Co. v. Tri-Borough N.Y. Med. Practice P.C.*, 120 F.4th 59, 80-81 (2d Cir. 2024) (recognizing that "fragmented" individualized proceedings can "obscur[e] ... an elaborate and complex fraudulent scheme" that becomes apparent only when claims are examined collectively); *Gov't Emps. Ins. Co. v. Patel*, 166 F.4th 280, 291-93 (2d Cir. 2026) (same).

b) <u>The Complaint Plausibly Alleges That the Fraud Was Not Discoverable Through Reasonable Diligence</u>

Highmark pleads non-discoverability separately for each category of misconduct. The Complaint identifies successive filings and alleges that detecting the cooling-off pattern required comparing each new dispute against prior determinations involving the same service, provider, and payor across a rolling 90-day period, all within the short objection window. The Complaint does not merely assert aggregate burden; it identifies determinations by date and DISP number and alleges that, amid hundreds of disputes each day, Highmark could not identify the pattern until post-proceeding analysis. Compl. ¶¶ 39-48, 53-54. These allegations explain both the misconduct and why Highmark could not reasonably have discovered it in time; they do not rest on a bare assertion that the IDR process was burdensome.

The mere existence of an eligibility-objection process does not establish that Highmark could reasonably identify the alleged violations in time to use it. The Departments'[2] June 2025 Technical Assistance guidance expressly addresses jurisdictional and procedural errors discovered after an IDR dispute has closed and provides a process for addressing closed disputes. *See Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties: Errors Identified After Dispute Closure* 1, 4-5 (June 2025). The guidance does not establish fraud or alter *France's* reasonable-diligence standard, but it confirms that the IDR framework contemplates post-closure discovery of eligibility-related errors. Highmark's allegations therefore cannot be rejected merely because an objection procedure existed.

Defendants' reference to Highmark's processing of "hundreds of millions of health insurance claims annually" does not establish reasonable, timely detection of cooling-off violations. Processing claims differs from comparing successive IDR disputes involving the same parties and services against prior determinations within the objection period. Highmark's later reconstruction of the violations from its records does not show that it reasonably could have identified them as the disputes were filed. *France* requires reasonable diligence, not contemporaneous detection of a scheme carefully designed to evade detection and that became apparent only after reviewing information across multiple proceedings.

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[2] In the NSA context, "the Departments" generally refers collectively to the three federal agencies responsible for the federal IDR regulations: the U.S. Department of Health and Human Services (HHS), which primarily operates through the Centers for Medicare & Medicaid Services (CMS); the U.S. Department of Labor (DOL); and the U.S. Department of the Treasury.

c) The Complaint Plausibly Alleges That the Fraud Was Material

Under *France*, materiality requires only a "nexus between the alleged fraud and the decision made by the arbitrator;" Highmark need not show that the arbitrator necessarily would have reached a different result. 43 F.4th at 381 (quoting *Odeon*, 864 F.3d at 196).

The nexus is direct here. Defendants' misrepresentations went to whether the disputes were eligible to proceed through IDR in the first place. Compl. ¶¶ 39-48, 53-54. Had Defendants truthfully disclosed that the disputes were subject to an unexpired cooling-off period, the disputes could not have proceeded to payment determinations at that time. The alleged misrepresentations thus did not merely bear on evidence the IDRE considered in selecting a payment amount; it enabled the barred proceedings—and the resulting awards—to occur.

Reach Air Medical Services LLC v. Kaiser Foundation Health Plan Inc., 160 F.4th 1110 (11th Cir. 2025), does not suggest otherwise. There, the court found no nexus because the IDRE's decision did not indicate that the allegedly false QPA information "overrode" the other evidence the IDRE considered. *Id.* at 1123. Here, Defendants' false eligibility attestations supplied the threshold premise allowing the disputes to proceed to payment determinations. That is more than enough to plead the nexus *France* requires.

d) Defendants' Limited Cases Confirm That Highmark States a Claim for Vacatur Under Section 10(a)(1)

Defendants cite *Reach Air* for the proposition that the NSA's "separate statement" that an award is binding absent fraud does not create a different standard from *France*. Highmark agrees: *France* controls, and the Complaint satisfies it for the reasons explained above.

Nor does *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-CV-1343-BJD-LLL, 2026 WL 1556164 (M.D. Fla. Apr. 16, 2026) support dismissal. There, the plaintiff admitted that it knew of the alleged fraud during the IDR proceedings. *Id.* at *3. Highmark alleges the opposite: that Defendants' repeated cooling-off violations were not reasonably discoverable within the objection period and became apparent only after Highmark compared information across separate proceedings. *See* Compl. ¶¶ 39-48, 53-54. Whether Highmark could have discovered the alleged fraud through reasonable diligence cannot be resolved against it on the pleadings.

Defendants also attack allegations concerning contracting dialogue and QPA information referenced elsewhere in the Complaint. Br. at 15. But Highmark does not rely on those allegations for fraud-based vacatur. Its § 10(a)(1) claim rests on Defendants' false eligibility attestations and false portal responses, and the Complaint supports those fraudulent representations in detail. Compl. ¶¶ 30-48.[3]

2. Highmark Plausibly Alleges That the IDREs Exceeded Their Powers Under Section 10(a)(4)

Section 10(a)(4) permits vacatur "where the arbitrators exceeded their powers." 9 U.S.C. § 10(a)(4). The question is whether the arbitrator acted within the authority conferred upon it, not whether it reached the correct result in exercising that authority. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569-70 (2013).

Highmark alleges that the IDREs lacked authority to make payment determinations in the challenged disputes because the NSA prohibited their initiation. After a payment determination, the initiating party may not initiate another IDR proceeding during the ensuing 90-day period "involving the same other party ... with respect to such an item or service." 42

[3] To the extent Defendants extend this argument to Highmark's fraud claim in Count II, it fares no better. Count II also rests on Defendants' false eligibility attestations and Portal responses, Compl. ¶ 74(a)-(b), which are supported by the detailed factual allegations discussed above. Defendants' passing reference to Highmark's complaint against a different defendant in another action, Br. at 3 n.4, does not undermine the sufficiency of the allegations pleaded here.

U.S.C. § 300gg-111(c)(5)(E)(ii).[4] The Complaint identifies numerous disputes initiated during that period. Compl. ¶¶ 39-48 & Ex. A.

Klay v. United Healthgroup, Inc., 376 F.3d 1092 (11th Cir. 2004), supports Highmark's theory: "[i]f a dispute is nonarbitrable, then an arbitrator necessarily exceeds his powers in adjudicating it." *Id.* at 1112 n.20. Highmark alleges that the cooling-off provision likewise barred the identified disputes from proceeding through IDR during the statutory period. Compl. ¶¶ 39-48. If so, the IDREs exceeded their authority by issuing payment determinations.

Oxford Health does not require a different result. There, the Court held that § 10(a)(4) does not permit vacatur for an erroneous interpretation where the arbitrator performed the task the parties assigned. 569 U.S. at 567-72. Highmark alleges a different defect: the cooling-off provision prohibited Defendants from initiating the disputes in the first place, so the IDREs lacked statutory authority to make payment determinations in them. *Ario v. Underwriting Members of Syndicate 53 at Lloyds* is likewise inapposite; it addressed whether an arbitrator's decision was "irrational" based on its weighing of evidence, not whether it exceeded its authority by deciding an inarbitrable claim. 618 F.3d 277, 295-96 (3d Cir. 2010).

a) <u>The IDRE's Role in Determining Eligibility Does Not Foreclose Highmark's Claim</u>

Defendants argue that IDREs could not have exceeded their powers because IDRE themselves decide eligibility in the first instance. Br. at 9-10. That sidesteps the issue alleged here: the cooling-off provision prohibited Defendants from initiating these disputes at the time

[4] Defendants suggest in their factual background that some disputes may have involved self-funded plans for which Highmark acted as administrator. Br. at 5. That fact-dependent contention does not warrant dismissal. The prior IDR determination letters identified in the Complaint expressly named Highmark as the opposing party and warned Defendants not to initiate subsequent disputes "involving Highmark" during the applicable cooling-off period. Compl. ¶¶ 43-44. Whether any particular challenged determination ultimately involved a different statutory "other party" is a claim-specific factual question that cannot defeat Highmark's cooling-off allegations as a whole at the pleading stage.

they did, and the IDREs nevertheless issued payment determinations in them, exceeding their authority.

The Departments' recent Final Rule confirms the distinction. Although IDREs make eligibility determinations initially, the Departments explained that they are "statutorily prohibited from making payment determinations for items and services that are not subject to the [NSA]" and "cannot ignore eligibility objections made at any point during the IDR process." *Federal Independent Dispute Resolution Operations*, 91 Fed. Reg. 33,900, 33,933 (June 4, 2026). Congress likewise subjected NSA payment determinations to judicial review under § 10(a), including § 10(a)(4). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Highmark therefore does not ask the Court to second-guess discretion entrusted to an IDRE. It alleges that an objective statutory restriction made the challenged disputes ineligible and that the IDRE nevertheless issued payment determinations. At the pleading stage, that is enough to state a claim under § 10(a)(4).

b) Defendants' Cases Do Not Defeat Highmark's Section 10(a)(4) Claim

Defendants' "similar NSA cases" concern different issues. The similarities end with the fact that they involve the NSA.

In *Reach Air*, the Eleventh Circuit rejected a § 10(a)(4) challenge to an IDRE's treatment of the QPA and other information bearing on payment. 160 F.4th at 1119-21. The IDRE was performing its assigned task—selecting between the parties' offers—and the challenge concerned how it performed that task. *Id.* Highmark's cooling-off claim instead concerns whether the disputes could proceed to payment determination at all; it alleges that the statute prohibited the IDREs from issuing payment determinations in the identified disputes.

The two *HaloMD* cases Defendants cite are non-controlling and do not require a different result. Br. at 10. In the first, the court reasoned that the "Plaintiffs do not (and cannot) allege that IDREs failed to rule in Anthem's favor in the complete absence of factual support for eligibility, because Plaintiffs allege that Defendants consistently represent (albeit falsely) to the IDREs that the claims are eligible." *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, No. 8:25-CV-01467-KES, 2026 WL 982629, at *9 (C.D. Cal. Apr. 9, 2026). The court concluded that Plaintiffs' "allegations collapse the analysis under § 10(a)(4) into the same test as § 10(a)(1)." *Id.* That reasoning is unsound: an IDRE exceeds its statutory authority when it decides claims and issues binding payment determinations for ineligible services. *Klay*, 376 F.3d at 1112.

In the second, the court cited the NSA's implementing regulations to conclude "that the NSA explicitly grant IDREs the right to make determinations as to whether IDR items and services are eligible under the NSA." *Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. v. HaloMD, Inc.*, No. 1:25-CV-2919-TWT, 2026 WL 2017291, at *24 (N.D. Ga. July 10, 2026). That reasoning overlooks the statutory limit on an IDRE's authority: Congress authorized payment determinations only "with respect to a determination for a qualified IDR item or service." 42 U.S.C. § 300gg-111(c)(5)(A). Regulations assigning IDREs the initial responsibility for determining eligibility cannot expand the authority Congress conferred by statute. *See Free Speech Coal., Inc. v. Att'y Gen. of U.S.*, 677 F.3d 519, 539 (3d Cir. 2012) ("It is axiomatic that regulations cannot supersede a federal statute."). And the Departments have since confirmed that IDREs are "statutorily prohibited" from issuing payment determinations for items and services not subject to the NSA. 91 Fed. Reg. 33,900, 33,933 (June 4, 2026). Initial eligibility authority therefore does not eliminate the statutory limits on an IDRE's authority or foreclose § 10(a)(4) review.

Defendants cite other cases for the proposition that "[m]andatory procedural prerequisites do not necessarily define adjudicatory power." Br. at 11. But the NSA states that IDREs may make payment determinations only "with respect to a determination for a ***qualified IDR item or service***." 42 U.S.C. § 300gg-111(c)(5)(A) (emphasis added). Defendants' non-

NSA authorities cannot override that text. Indeed, in *Union Pacific Railroad*, the Supreme Court distinguished between procedural rules imposed by an adjudicatory body and limits imposed by Congress itself, explaining that "Congress gave the Board no authority to adopt rules of a jurisdiction dimension." *Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 83-84 (2009). Here, it is Congress—not the IDREs—that defined which disputes are eligible for IDR.

Howsam v. Dean Witter Reynolds, Inc. and *BG Group PLC v. Republic of Argentina* do not compel a different result. *Howsam* involved a limitations-period question arising under a *private* arbitration agreement, 537 U.S. 79, 84-85 (2002), while *BG Group* addressed when a contractual duty to arbitrate arose. 572 U.S. 25, 34-35 (2014). The NSA presents a different question. Congress created the IDR process, prohibited initiation of another qualifying dispute during the 90-day cooling-off period, and authorized payment determinations only for qualified IDR items or services. Those cases therefore do not resolve whether an IDRE exceeds its statutory authority by issuing a payment determination in a dispute that Congress prohibited from being initiated at that time. Whether a dispute is subject to IDR is therefore a gateway question for the Court, not a procedural question for the IDRE. *See Howsam,* 537 U.S. at 84; *AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986); *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207 (3d Cir. 2007).[5]

Nor does the fact that a dispute may be submitted after the cooling-off period expires cure a premature initiation. Highmark alleges that the disputes were ineligible when Defendants

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[5] *See also U.S. Postal Serv. v. Am. Postal Workers Union, AFL--CIO*, 46 F. Supp. 2d 457, 460 (E.D. Va. 1999) ("The issue of whether a dispute is subject to arbitration, and thus within the arbitrator's power to consider, is a matter strictly for judicial, rather than arbitral, determination."); *Aetna Cas. & Sur. Co. v. Deitrich*, 803 F. Supp. 1032, 1039 (M.D. Pa. 1992) ("The determination of whether an arbitrator 'exceeded proper powers' depends upon whether the arbitrator decided a dispute over which he had no jurisdiction, or granted an award which is prohibited by law.") (citation omitted). That "gateway" question of IDR eligibility is a matter of statutory interpretation—of baseline arbitrability under law—that is for the judiciary to decide. *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is"); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) ("When the meaning of a statute [is] at issue, the judicial role [is] to 'interpret the act of Congress, in order to ascertain the rights of the parties.'") (citation omitted).

initiated them and that the IDREs nevertheless issued payment determinations. Treating the IDREs' initial eligibility determinations as conclusive would foreclose § 10(a)(4) review whenever an IDRE first found a dispute eligible. Although the NSA permits submission after the 90-day period expires, that later opportunity does not authorize a premature filing or payment determination. Nothing in the NSA requires that result, particularly where Congress expressly incorporated § 10(a)(4) as a ground for review. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

* * *

Count I thus invokes two distinct grounds for vacatur expressly incorporated into the NSA. Under § 10(a)(1), Highmark alleges that Defendants procured payment determinations through false eligibility attestations that were not reasonably discoverable during the IDR process. Under § 10(a)(4), it alleges that IDREs issued payment determinations in disputes the cooling-off provision prohibited Defendants from initiating at that time, exceeding their authority. Neither theory asks the Court to revisit the payment amount, and none of Defendants' authorities requires dismissal. The Complaint therefore plausibly states a claim for vacatur under Count I.

B. THE COMPLAINT SATISFIES RULE 9(B) AND PLEADS THE ELIGIBILITY FRAUD WITH PARTICULARITY

Highmark pleads the alleged eligibility fraud with the particularity Rule 9(b) requires. The Complaint identifies the actors, representations, proceedings, dates, procedure codes, and reason the eligibility attestations were false, and explains how they allegedly caused Highmark to incur payment obligations, fees, and investigative costs. Compl. ¶¶ 22-45, 73-79. That is particularized pleading, not a generalized accusation or a challenge to the amounts selected by the IDREs.

1. The Complaint Identifies the Who, What, When, Where, and How of the Eligibility Fraud

The Complaint identifies the challenged representations and supplies concrete examples. It alleges that Defendants falsely attested that the items and services were qualified for federal IDR and inaccurately answered the Portal's Qualification Questions despite prior determinations expressly notifying them of the applicable cooling-off periods. Compl. ¶¶ 30-45, 74-76. For example, after a May 3, 2023 determination for procedure code 95938 (DISP-214789) triggered a cooling-off period, Defendants initiated two disputes for that code the next day (DISP-394080 and DISP-394281). After another determination for the same code on May 8, 2023, they initiated another dispute on May 10 (DISP-404291) and another within the same cooling-off period (DISP-437278). *Id.* ¶ 43(b)-(d). The Complaint alleges comparable sequences for codes 95938 and 95870 in 2024, including filings initiated after determinations expressly identifying the 90-day restriction. *Id.* ¶ 43(e)-(h). Exhibit A identifies the challenged determinations. The Complaint also identifies where the alleged misrepresentations were made (the IDR portal) and each Defendant's roles: RNP was a party to the prior determinations and later disputes, and SpecialtyCare acted as RNP's biller and IDR administrator and prepared, transmitted, or caused the later filings. *Id.* ¶¶ 8-11, 39-45, 74-76. These allegations provide the particularity Rule 9(b) requires.

2. Rule 9(b) Does Not Require Transaction-Level Detail for Every Challenged Determination

Defendants' demand for award-by-award detail is more than Rule 9(b) requires. The Third Circuit does not apply Rule 9(b) to require the date, time, place, or content of every false claim where the complaint provides particular details of the scheme and reliable indicia of the alleged misconduct. *See Bookwalter*, 946 F.3d at 176; *Foglia*, 754 F.3d at 156-58. Highmark identifies representative proceedings by date, procedure code, and dispute number; alleges a recurring pattern of filings following prior cooling-off notices; and identifies the broader set of challenged determinations in Exhibit A. *See* Compl. ¶¶ 30-48 & Ex. A. Whether discovery ultimately establishes the same pattern for every entry in Exhibit A is irrelevant to Rule 9(b).

3. The Complaint's Non-Discoverability Allegations Further Support Sufficiency Under Rule 9(b)

Rule 9(b) is applied with sensitivity where facts material to the alleged fraud are within defendants' knowledge or control. *Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 284-85 (3d Cir. 1992) (superseded by statute on other grounds); *Foglia*, 754 F.3d at 158. As explained in Section III.A.1(b), Defendants allegedly knew the cooling-off restrictions applicable to their own disputes, while identifying the falsity of their later eligibility attestations required Highmark to connect those filings to separate prior proceedings within three business days. Compl. ¶¶ 42, 46-48, 53-55. Those allegations reinforce the sufficiency of the Complaint under Rule 9(b).

C. HIGHMARK'S NON-VACATUR CLAIMS ARE VIABLE

1. Highmark's State-Law Claims Are Not Collateral Attacks

Defendants characterize Counts II-VI as improper attempts to relitigate the IDREs' payment determinations. Br. at 16-18. But those claims challenge Defendants' own conduct: knowingly initiating disputes during the statutory cooling-off period and falsely representing that those disputes were eligible. Compl. ¶¶ 39-48, 53-55, 74-77. That conduct allegedly caused injuries independent of the amount selected by the IDREs, including non-refundable fees and resources spent processing and investigating disputes that should not have been initiated. *Id.* ¶ 79. Count VI also seeks narrowly tailored prospective relief against future cooling-off violations and false eligibility attestations, which vacatur of past awards cannot provide. *Id.* ¶¶ 100-06.

That is the distinction *Great Western* draws. The Third Circuit looks to the source of the alleged injury: where the injury is caused by the defendant's conduct rather than the prior judgment itself, "the federal suit is independent." *Great W. Mining & Min. Co. v. Fox*

Rothschild LLP, 615 F.3d 159, 167 (3d Cir. 2010). A claim alleging fraud in procuring a prior adjudication may likewise remain independent even if success affects that adjudication. *Cf. Johnson v. Draeger Safety Diagnostics, Inc.*, 594 F. App'x 760, 764-66 (3d Cir. 2014). Here, the alleged injury stems from Defendants' conduct in knowingly initiating barred disputes and falsely representing their eligibility, not from the payment amounts the IDRE selected.

Adorers of the Blood of Christ U.S. Province v. Transcontinental Gas Pipe Line Co. and *Bakran v. United States Department of Health & Human Services* do not require a different result. *Adorers* involved claims whose "heart" challenged conduct authorized by FERC and objections that could have been raised through the Natural Gas Act's exclusive-review scheme. 53 F.4th 56, 64 (3d Cir. 2022). *Bakran* held that a challenge to the Secretary of Homeland Security's rejection of an application for permanent residency was not reviewable because the statutory scheme in question "grant[ed] the Secretary unreviewable discretion in both concluding that a petitioner poses no risk and the process by which the Secretary reaches this decision." 894 F.3d 557, 563 (3d Cir. 2018). Highmark does not challenge the IDREs' decisional process or seek another opportunity to litigate the appropriate payment amount. It alleges that Defendants knowingly initiated disputes while the statutory cooling-off restriction remained in effect and falsely represented that those disputes were eligible.

Texas Brine Co. v. Am. Arb. Ass'n, 955 F.3d 482 (5th Cir. 2020), is further afield. There, the plaintiff obtained vacatur and then sued the arbitrators and the AAA based on the same misconduct underlying vacatur. *Id.* at 483-85, 490. Here, Count I invokes the NSA's incorporated FAA grounds to challenge the determinations, while Counts II-VI seek alternative relief for Defendants' own conduct and the resulting fees, resource costs, and prospective harm.[6]

Nor does *Novo Nordisk Inc. v. Secretary U.S. Department of Health & Human Services*, 154 F.4th 105 (3d Cir. 2025), convert those claims into collateral attacks. *Novo Nordisk* held that a statutory restriction on review of a "determination" can encompass both the final decision and "the process by which" the decisionmaker reached it. *Id.* at 111-13. Highmark challenges neither. Its state-law claims concern Defendants' conduct before the IDREs made their payment determinations—initiating allegedly barred disputes and falsely representing their eligibility—and injuries allegedly caused by that conduct.

The other NSA decisions Defendants cite are distinguishable.[7] Highmark alleges that Defendants repeatedly initiated disputes during active cooling-off periods despite individualized notices and falsely represented that those disputes were eligible. Compl. ¶¶ 37-48, 53-55, 77-78. An IDRE's initial eligibility determination does not establish Defendants' knowledge or the truth of those representations and therefore does not preclude Highmark from litigating those issues here.

2. Issue Preclusion Does Not Foreclose Highmark's State-Law Claims

Defendants also cannot establish that issue preclusion bars Counts II-VI. They bear the burden of showing, among other things, that the same issue was actually litigated, essential to a valid final judgment, and resolved in a proceeding affording Highmark a full and fair

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[6] *Bachman Sunny Hill Fruit Farms, Inc. v. Producers Agric. Ins. Co.*, 57 F.4th 536 (6th Cir. 2023), is even further afield as it addressed an effort to use an alternative administrative remedy to bypass the FAA's procedures and time limits for challenging an arbitration award. *Id.* at 540-43. Highmark does no such thing. It invokes the NSA's incorporated FAA vacatur procedures in Count I and separately asserts state-law claims for injuries allegedly caused by Defendants' conduct in initiating barred disputes and falsely representing their eligibility.

[7] Defendants rely on three out-of-circuit *HaloMD* decisions. *See* Br. at 10 (citing *Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. v. HaloMD, Inc.*, No. 1:25-cv-2919-TWT, 2026 WL 2017291 (N.D. Ga. July 10, 2026); *Blue Cross Blue Shield of Texas* v. *HaloMD, LLC*, 2026 WL 1557492 (E.D. Tex. May 22, 2026); and *Anthem Blue Cross Life & Health Insurance Co. v. HaloMD LLC*, No. 8:25-cv-01467-KES, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026)). None establishes that an IDRE's eligibility determination adjudicates a provider's knowledge or the truthfulness of its eligibility attestations and therefore do not foreclose Highmark's claims here.

opportunity to litigate. *Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 288 F.3d 519, 525 (3d Cir. 2002). The pleadings do not establish those requirements.

First, the issues are not the same. An IDRE selects one of two payment offers; it does not adjudicate whether Defendants knowingly initiated disputes during the cooling-off period or knowingly made false eligibility representations. *Cf. Texas Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 110 F.4th 762, 768 (5th Cir. 2024). An initial eligibility determination does not decide Defendants' knowledge or intent. Indeed, the Departments have confirmed that IDREs are "statutorily prohibited" from making payment determinations for items or services not subject to the NSA. *Federal Independent Dispute Resolution Operations*, 91 Fed. Reg. 33,900, 33,933 (June 4, 2026).

Second, Highmark lacked a full and fair opportunity to litigate Defendants' knowledge, intent, and alleged misrepresentations in the IDR process.[8] The IDR process afforded Highmark three business days to raise eligibility objections and did not provide discovery, witnesses, sworn testimony, cross-examination, oral argument, or guaranteed access to and an opportunity to respond to the opposing party's submission. *See Reach Air*, 160 F.4th at 1116. Highmark alleges that identifying the cooling-off violations required connecting later filings to separate prior proceedings and that the broader pattern emerged only after comparing multiple IDRs. Compl. ¶¶ 47-48, 53-55, 77-78. That compressed process did not provide a full and fair opportunity to litigate Defendants' knowledge, intent, or alleged fraud. Nor is the IDR process comparable to the TTAB proceedings in *B&B Hardware, Inc. v. Hargis Industries*, 575 U.S.

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[8] Defendants contend that "Highmark cannot avoid preclusion by arguing that it failed to press" its claims during IDR. Br. at 19 (citing *O'Leary v. Liberty Mut. Ins. Co.*, 923 F.2d 1062, 1066 (3d Cir. 1991)). But Highmark argues that IDR lacks the minimum requirements of due process and thus cannot have preclusive effect. Neither *O'Leary* nor *Seborowski v. Pittsburgh Press Co.*, 188 F.3d 163, 169-70 (3d Cir. 1999), holds otherwise. Both involved proceedings with evidentiary safeguards absent from federal IDR, where Highmark had three business days to raise an eligibility objection, no discovery or cross-examination, and no opportunity to litigate Defendants' knowledge or intent.

138, 144 (2015), which afforded the parties discovery, testimony, and an opportunity to litigate the issue later asserted to be precluded. Federal IDR, by contrast, is designed for rapid offer selection, not adversarial fact development. *See Gruntal & Co. v. Steinberg*, 854 F. Supp. 324, 337 (D.N.J. 1994).[9]

Nor could any individual IDR determination have resolved the broader course of conduct alleged here. The Complaint alleges repeated cooling-off violations across separate proceedings, together with Defendants' knowledge of prior determinations and individualized warnings. Compl. ¶¶ 37-48, 53-55, 77-78. *Aghaeepour v. North Leasing Systems, Inc.*, 378 F. Supp. 3d 254, 265-66 (S.D.N.Y. 2019), recognized that preclusion does not apply where fraud in an earlier proceeding forms part of a broader scheme. No IDRE adjudicated that alleged pattern, Defendants' knowledge, or their intent in making the challenged eligibility representations.

The Third Circuit has "caution[ed] against [preclusion's] invocation … without extreme care" and instructed that doubts should generally be resolved against its use. *Witkowski v. Welch*, 173 F.3d 192, 206 (3d Cir. 1999). Defendants have not carried their burden, and issue preclusion therefore cannot support dismissal of Counts II-VI.

3. Conflict Preemption Does Not Bar Highmark's State-Law Claims

Conflict preemption applies only when compliance with state and federal law is impossible or state law stands as an obstacle to federal objectives. *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 688 (3d Cir. 2016). Neither is true here. Defendants can comply with both federal and state law by refraining from initiating disputes during the statutory cooling-off period and truthfully representing their eligibility. Highmark's claims enforce

[9] *See also Metro. Edison Co. v. Pennsylvania Pub. Util. Comm'n*, 767 F.3d 335, 351 n.22 (3d Cir. 2014) (recognizing that preclusion requires a full and fair opportunity to litigate).

independent state-law duties arising from that conduct; they do not prescribe the payment amount an IDRE should select.[10]

Nor do the claims obstruct the NSA's scheme. The NSA itself provides that payment determinations are binding only in the absence of fraud or misrepresentation. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). The obstacle branch fails for the same reason. *Guardian Flight LLC v. Aetna Life Insurance Co.*, 2026 WL 1734646, at *3 (D. Conn. June 16, 2026), and *Aetna Health*, 2026 WL 1556164, at *4, are nonbinding decisions treating the state-law claims before them as attempts to reopen payment determinations or evade the NSA's limited review.[11] They do not displace state-law remedies for knowingly initiating ineligible disputes and falsely attesting to eligibility. Count I uses the NSA's vacatur mechanism; Counts II-VI seek fees, resource costs, and prospective relief for the underlying conduct. An injunction requiring compliance with the cooling-off rule and truthful attestations would reinforce, not obstruct, the federal scheme.

D. PENNSYLVANIA JUDICIAL PRIVILEGE, *NOERR-PENNINGTON*, AND UPEPA DO NOT BAR HIGHMARK'S CLAIMS

Defendants contend that their IDR submissions and false eligibility attestations are protected by Pennsylvania's judicial privilege, the *Noerr-Pennington* doctrine, and Pennsylvania's Uniform Public Expression Protection Act ("UPEPA"), 42 Pa. C.S. § 8340.13,

[10] *See Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988) (state-law claims that turn on factual questions independent of the federal scheme are not preempted). Traditional Pennsylvania fraud, restitution, and equitable remedies complement the NSA's gatekeeping rules rather than conflict with them. And they do not second-guess the NSA's payment-determination framework, but target Defendants' knowledge and the timing and circumstances of their IDR initiations.

[11] Defendants cite *KalshiEx, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026), for its broad statement of conflict-preemption law, but tellingly fail to analogize *KalshiEx*'s facts. *See* Br. at 19-20. There, the court held that New Jersey's gambling regulation of CFTC-regulated event contracts was preempted because the "text and structure" of the Commodity Exchange Act ("CEA") showed that the CFTC has "exclusive jurisdiction over trades on [designated contract markets]." *Id.* at 229-31. Unlike the CEA, the NSA does not give IDREs "exclusive jurisdiction" over fraud claims against IDR *participants*. Moreover, its text expressly recognizes that awards are binding only "in the absence of a fraudulent claim or evidence of misrepresentation." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).

and seek fees, costs, and litigation expenses under UPEPA. *Br.* at 25. None of these protections applies.

Pennsylvania judicial privilege does not apply. The privilege extends to quasi-judicial proceedings possessing adjudicatory features such as discretion, notice, a hearing, and comparable procedural safeguards, including the right to cross-examine witnesses. *Urbano v. Meneses*, 431 A.2d 308, 311 (Pa. Super. 1981); *Pollina v. Dishong*, 98 A.3d 613, 620-23 (Pa. Super. 2014) (holding that an investigation and related opinions were not quasi-judicial where they lacked an adjudicatory process).

The IDR process has no hearing or cross-examination; private IDREs receive competing offers and select a payment amount. Its binding effect does not transform a private IDRE into a governmental tribunal or confer an absolute privilege on fraudulent submissions. *See Ralston v. Garabedian*, 676 F. Supp. 3d 325, 346-48 (E.D. Pa. 2021) (private mediation was not quasi-judicial because it involved no governmental body, binding decisionmaking authority, or comparable safeguards).[12]

Overall v. University of Pennsylvania, 412 F.3d 492 (3d Cir. 2005), does not establish otherwise. *Overall* did not hold that statutory authorization alone makes a proceeding quasi-judicial; it emphasized governmental involvement and observed that no Pennsylvania case had accorded quasi-judicial status to an entirely private hearing. *Id.* at 497-98. Federal regulation of the IDR process does not make an IDRE a governmental tribunal. The judicial privilege therefore does not apply.

***Noerr-Pennington* fails for a similar reason.** The doctrine protects petitioning directed toward government action, not submissions to a private decisionmaker. *See A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 250 (3d Cir. 2001); *Octane Fitness,*

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[12] *Schanne v. Addis*, 121 A.3d 942, 947 (Pa. Super. Ct. 2015), which Defendants cite for the proposition that the privilege applies "even if the statement is false and made with malice," does not suggest otherwise. The privilege applies only to statements made in judicial or quasi-judicial proceedings. The IDR process is neither.

LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 555-56 (2014). The NSA's IDR process instead places payment disputes before private IDREs that function as arbitrators. *See Guardian Flight L.L.C. v. Medical Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 622-23 (5th Cir. 2025). Federal administration of the portal and certification of IDREs do not make them governmental decisionmakers. *See Ford Motor Co. v. National Indemnity Co.*, 972 F. Supp. 2d 862, 868-69 (E.D. Va. 2013).

Even if *Noerr-Pennington* were to apply (it does not), the Complaint alleges misrepresentations going to the core of the proceedings. *See Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 123-24 (3d Cir. 1999) (holding that a misrepresentation affecting the very core of a petition defeats immunity); *Uber Technologies, Inc. v. Simon & Simon P.C.*, No. 25-cv-5365, 2026 U.S. Dist. LEXIS 103792, at *31-34 (E.D. Pa. May 11, 2026) (denying dismissal where pleaded misrepresentations went to the factual predicates of the claims and plausibly affected the core of the proceedings). Highmark alleges that Defendants knowingly submitted materially false eligibility attestations stating that disputes were eligible even though they knew the cooling-off period barred initiation. Those attestations supplied the threshold predicate that allowed the disputes to proceed to payment determinations. Taking the allegations as true, *Noerr-Pennington* cannot support dismissal.

Pennsylvania's UPEPA likewise does not warrant dismissal or fees. In *Jakes v. Youngblood*, 782 F. Supp. 3d 210, 217-20 (W.D. Pa. 2025), this Court held that UPEPA's immunity provision (§ 8340.15) conflicts with Rules 12(b)(6) and 56 and therefore does not apply in federal court. Because § 8340.18(a)(1) makes fees contingent on immunity under § 8340.15, Defendants are not entitled to fees. *See Henrich v. Colby's Crew Rescue*, No. 25-4961, 2026 U.S. Dist. LEXIS 64006, at *24-28 (E.D. Pa. Mar. 26, 2026) (denying fees after a

Rule 12(b)(6) dismissal because § 8340.18 is predicated on an immunity finding under § 8340.15). Defendants have not cited contrary authority.[13]

E. THE COMPLAINT STATES CLAIMS UNDER PENNSYLVANIA LAW

1. The Complaint States a Claim for Fraud and Intentional Misrepresentation

Pennsylvania fraud requires a material false representation, knowledge or recklessness as to falsity, intent to induce reliance, justifiable reliance, and resulting injury. *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994). Pennsylvania does not categorically bar a fraud claim because a representation also reached a third-party decisionmaker. *Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912, 935 n.19 (3d Cir. 1999); *see also Boyer v. Clearfield County Indus. Dev., N.A.*, No. 3:19-152, 2022 U.S. Dist. LEXIS 158222, at *20-21 (W.D. Pa. Feb. 3, 2022).

The Complaint alleges each element. Defendants transmitted eligibility attestations to Highmark, the Departments, and the IDREs as part of the IDR process, intending that Highmark act on them to process the dispute and satisfy resulting payment obligations. Compl. ¶¶ 35, 74-79. Highmark alleges that it reasonably relied on those representations; indeed, it was forced to rely on Defendants' eligibility attestations due to the volume of claims they submitted.[14] Highmark further alleges that it incurred payments, fees, and investigative costs as a result. *Id.* ¶¶ 73-79. The prior determinations and individualized cooling-off notices, followed by repeated filings during the prohibited periods, support a plausible inference of knowledge or recklessness. *Id.* ¶¶ 30-45. For the reasons explained above, reasonable reliance

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[13] Although *Lento Law Group PC v. Estrada*, No. 25-cv-2763, 2026 WL 2100471, at *13-15 & n.13 (E.D. Pa. July 21, 2026), reached a contrary result, the Court should follow its own, published decision in *Jakes*.

[14] *See Patel*, 166 F.4th at 291-93 (fraud may exist where plaintiff alleged "fragmented proceedings that 'involve single claims for a single date of service, so that these fragmented proceedings end up obscuring…an elaborate and complex fraudulent scheme") (citation omitted).

did not require Highmark to assume that Defendants' eligibility attestations were false and reconstruct the relevant prior proceedings within three business days.

2. The Complaint Alternatively States a Claim for Negligent Misrepresentation

The negligent misrepresentation claim survives for much the same reason. Pennsylvania recognizes common-law negligent misrepresentation as well as liability under Section 552 of the Restatement (Second) of Torts. *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 280, 287 (Pa. 2005). Whether analyzed under Section 552 or Pennsylvania common law, the Complaint states a plausible claim. Highmark alleged that Defendants supplied false eligibility information in a transaction in which they had a pecuniary interest, lacked reasonable grounds for the representations, intended reliance, Highmark received and relied on those representations in processing the disputes, and that it suffered resulting injury. Compl. ¶¶ 74-87. *See Aetna Inc. v. Mednax, Inc.*, No. CV 18-2217, 2018 WL 5264310, at *8 (E.D. Pa. Oct. 23, 2018). Those allegations are sufficient at the pleading stage.

3. The Complaint States a Claim for Civil Conspiracy

Civil conspiracy requires two or more persons acting with a common purpose to accomplish an unlawful act or a lawful act by unlawful means, an overt act, legal damage, malice, and an underlying tort. *See N. Am. Dental Mgmt., Inc. v. Phillips*, No. 23-cv-1202, 2025 U.S. Dist. LEXIS 25112, at *12-13 (W.D. Pa. Feb. 12, 2025). Highmark's fraud claim supplies the underlying tort. The Complaint alleges coordinated conduct by two distinct corporations: RNP initiated and benefited from disputes despite prior determinations, while SpecialtyCare prepared, transmitted, or caused the filings and attestations. Compl. ¶¶ 8-11, 39-45, 88-92. It further alleges a common objective of obtaining payments through disputes Defendants knew were barred. *Id.* ¶¶ 39-45, 74-79, 88-92. *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 472 (Pa. 1979), does not require dismissal because the alleged objective was to obtain payment through knowingly false certifications, not merely to pursue legitimate reimbursement.

The intracorporate conspiracy doctrine does not require dismissal. It applies when alleged co-conspirators act within an agency relationship or solely for the principal's benefit. *See Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 313-14 (3d Cir. 2003); *Heffernan v. Hunter*, 189 F.3d 405, 412-13 (3d Cir. 1999). The Complaint alleges that RNP and SpecialtyCare are separate corporations engaged in different businesses, and performing different roles in the alleged conduct. Compl. ¶¶ 8-9. The Court therefore need not treat them as a single actor at this stage.

4. The Complaint States a Claim for Unjust Enrichment

Unjust enrichment requires a benefit conferred on the defendant, appreciation of that benefit, and circumstances making retention inequitable. *See ABB Constr., LLC v. Allen*, No. 2:24-cv-1112, 2026 U.S. Dist. LEXIS 65513, at *16 (W.D. Pa. Mar. 27, 2026). The benefit need not pass directly from plaintiff to defendant. *See D.A. Hill Co. v. Clevetrust Realty Invs.*, 524 Pa. 425, 432, 573 A.2d 1005, 1009 (1990). Highmark alleges that Defendants retained payments obtained through disputes initiated in violation of the cooling-off provision and through false eligibility representations. Compl. ¶ 95 & Ex. A. If proved, those allegations support unjust enrichment.

5. The Complaint Adequately Pleads a Basis for Declaratory and Injunctive Relief

Defendants correctly note that declaratory and injunctive relief is not a freestanding cause of action. But Highmark has pleaded substantive claims, so its request for such relief remains viable if those claims survive dismissal.

IV. <u>CONCLUSION</u>

For the foregoing reasons, Highmark respectfully requests that the Court deny Defendants' motion to dismiss. In the alternative, Highmark requests leave to amend.

Dated: September 15, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was electronically filed via the Court's ECF system, which will cause notice to be delivered to all counsel of record.

Dated: September 15, 2026

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