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

HIGHMARK INC., Plaintiff, v. BROMEDICON, LLC and HALOMD, LLC, Defendants.	Civil Action No. 2:26-cv-01175-NR Hon. J. Nicholas Ranjan District Judge Electronically Filed

DEFENDANT BROMEDICON, LLC'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT AND AWARD FEES

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), Defendant Bromedicon, LLC respectfully moves for an order dismissing Plaintiff's Complaint (the "Complaint"), ECF No. 1, with prejudice. Bromedicon further moves for attorney fees, costs, and expenses under 42 Pa. C.S. § 8340.18(a)(1). In support of this Motion, Bromedicon states as follows:

1. The factual and legal grounds for this Motion are set forth in the accompanying Brief in Support of Defendant Bromedicon, LLC's Motion to Dismiss, which Bromedicon hereby incorporates by reference.

2. Counsel for the Bromedicon met and conferred with counsel for Highmark Inc. before filing this Motion, as detailed in the certification provided below.

WHEREFORE, Bromedicon respectfully moves that the Court grant this Motion, enter the attached proposed order, dismiss the Complaint for failure to plead subject-matter jurisdiction and for failure to state a claim on which relief can be granted, and award Bromedicon attorney fees, costs, and expenses.

A proposed Order is attached.

DATED: July 29, 2026

Respectfully submitted,

/s/ B. Kurt Copper

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CERTIFICATE OF COMPLIANCE

Pursuant to Judge Ranjan's Practices and Procedures § II.(d), I certify that counsel for Bromedicon, LLC made good-faith efforts to confer with counsel for Highmark Inc. during a telephonic conference on July 24, 2026, to determine whether the identified pleading deficiencies properly may be cured by amendment. Counsel for Highmark Inc. declined to dismiss the Complaint and made no indication it would amend.

Dated: July 29, 2026

/s/ *B. Kurt Copper*
B. Kurt Copper
Counsel for Bromedicon, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I caused the foregoing document to be filed with the Clerk of the Court using CM/ECF, which will effectuate service upon all counsel of record.

/s/ *B. Kurt Copper*
B. Kurt Copper
Counsel for Bromedicon, LLC

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[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2026, upon consideration of Defendant Bromedicon, LLC's Motion to Dismiss Plaintiff Highmark Inc.'s Complaint and Award Fees pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) and 42 Pa. C.S. § 8340.18(a)(1) (the "Motion") and all related briefing, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion is GRANTED. Plaintiff Highmark Inc.'s Complaint is DISMISSED WITH PREJUDICE, and the Court will award fees, court costs and expenses of litigation to Defendant Bromedicon, LLC.

SO ORDERED.

BY THE COURT:

_____
J. NICHOLAS RANJAN
UNITED STATES DISTRICT JUDGE

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BRIEF IN SUPPORT OF DEFENDANT BROMEDICON, LLC'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND AWARD FEES

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INTRODUCTION

Highmark Inc. participated in the mandatory arbitration process known as Independent Dispute Resolution ("IDR"), which Congress designed to efficiently resolve payment disputes between health care providers and insurers. Highmark lost many of those arbitrations. Rather than accept the outcomes, as it must, Highmark turned to federal court in an attempt to collaterally attack the losing arbitration determinations (but not those where it prevailed) and to chill medical providers from accessing these federal dispute procedures in the future. In other words, it seeks a redo on scores of individual arbitrations that it already lost. Congress, however, chose to keep these disputes out of federal court.

In assessing Highmark's claims, this Court need not chart new ground—it should follow the statutory text and many sister courts to dismiss the Complaint. Indeed, Highmark's complaint is one ripple in the wave of litigation health insurance companies have filed in federal courts around the country reflecting their frustration with the No Surprises Act ("NSA"). Numerous federal courts—from California to Texas, Hawaii to the Eastern District of Pennsylvania—have already rejected insurers' attempts to repackage dissatisfaction with NSA outcomes as fraud, RICO, and state-law claims.[1] And every federal court to have addressed cases brought by insurers contesting NSA IDR awards has granted the health providers' motions to dismiss, including the

[1] *See, e.g., Anthem Blue Cross Life & Health Ins. v. HaloMD*, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026) ("*HaloMD CA*"); *Blue Cross Blue Shield of Tex. v. HaloMD*, 2026 WL 1557492 (E.D. Tex. May 22, 2026) ("*HaloMD TX*"); *Blue Cross Blue Shield Healthcare Plan v. HaloMD*, 2026 WL 2017291 (N.D. Ga. July 10, 2026) ("*HaloMD GA*"); *Aetna Health, Inc. v. Radiology Partners, Inc.*, 2026 WL 1556164 (M.D. Fl. Apr. 16, 2026); *UnitedHealthcare of Pa., Inc. v. NorthStar Anesthesia of Pa., LLC*, 2026 WL 1145885 (E.D. Pa. Apr. 28, 2026); *Guardian Flight LLC v. Aetna Life Ins. Co.*, 2026 WL 1734646 (D. Conn. June 16, 2026); *Unitedhealthcare Ins. Co. v. Maui Mem'l Emergency Med. Assocs., Inc.*, 2026 WL 1965882 (D. Haw. July 7, 2026).

Northern District of Georgia just this month. This complaint should meet the same fate for multiple reasons.

First, this Court lacks subject matter jurisdiction over most of Highmark's claims. The NSA states that decisions of IDREs "shall not be subject to judicial review," and the sole limited exception it permits is via the limited grounds for vacatur incorporated from Section 10(a) of the Federal Arbitration Act ("FAA"). Highmark cannot evade that bar by repackaging its tenuous "fraud" allegations into state-law tort claims or a request for declaratory relief.

Even beyond the jurisdictional defects, Highmark's claims also fail under Rule 12(b)(6) and Rule 9(b). To start, Highmark has not alleged fraud with particularity as required. Second, the vacatur claim does not adequately plead any cognizable claim of fraud, undue means, or abuse of authority by the arbitrators sufficient to vacate the awards en masse. Third, the doctrine of issue preclusion separately bars these challenges because Highmark's tort claims ask this Court to relitigate disputes that Highmark already lost before federally-certified arbitrators. Fourth, the Noerr-Pennington doctrine independently bars Highmark from asserting claims based on protected petitioning activities. Finally, the state-law claims fail under their own elements.

Respectfully, the Court should dismiss.

BACKGROUND

I. The No Surprises Act IDR Process Provides Efficient, Final Resolution Of Disputes.

Effective January 1, 2022, the No Surprises Act protects patients from surprise medical bills when insurers refuse to pay for out-of-network services. *See* 42 U.S.C. § 300gg-111. Instead of burdening patients with those bills, Congress created a detailed statutory structure to provide binding resolution of resulting payment disputes between providers and insurance plans.

The first step in the NSA process is for the provider and the plan to engage in a 30-day negotiation period in an attempt to reach agreement on the proper payment. *Id.* § 300gg-

111(c)(1)(A). The non-initiating party's first chance to raise potential eligibility issues with any underlying claim is during these negotiations.[2] If negotiations fail, either party can initiate a binding arbitration called an "independent dispute resolution process" or "IDR," *id.* § 300gg-111(c)(1)(B), by submitting a notice and attesting "to the best of my knowledge," Compl. ¶ 35, that the relevant services are eligible, 45 C.F.R. § 149.510(b)(2)(iii)(A)(6). An independent dispute resolution entity or "IDRE" is jointly agreed upon or appointed from a list of government-certified arbiters. 42 U.S.C. § 300gg-111(c)(4).

Once in place, the IDRE independently determines whether a dispute is eligible, 45 C.F.R. § 149.510(c)(1)(v), as the IDREs are ultimately "responsible for ensuring that eligibility and payment determinations are accurate."[3] The determination includes whether the patient's insurance covered the relevant services, whether procedural requirements were met, and whether a "specified state law" covered the dispute. *See* Compl. ¶ 22. If the non-initiating party believes the dispute is ineligible, it "must . . . provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal" four business days after the IDRE's selection. 45 C.F.R. § 149.510(c)(1)(iii).[4]

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[2] *See* HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties* 13 (updated Dec. 2023), https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf ("either party . . . may file a complaint").

[3] CMS, *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties* 2 (June 2025), https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf; *see also Supplemental Background on Federal Independent Dispute Resolution Public Use Files January 1, 2025 – June 30, 2025*, at 3, https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf.

[4] HHS et al., *supra* note 2, at 17 (noting the challenge "must be provided not later than 1 business day after the end of the 3- business-day period for certified IDR entity selection").

The IDRE determines eligibility based on the parties' combined submissions, *id.* § 149.510(c)(1)(v), and to that end, federal guidance "encourage[s] [IDREs] to have robust quality assurance (QA) programs to verify dispute eligibility."[5] An IDRE's certification depends on properly applying the NSA, including its eligibility rules, and may be "revoked . . . if the entity has a pattern or practice of noncompliance." 42 U.S.C. § 300gg-111(c)(4)(A). Indeed, parties can even petition CMS to have an IDRE's certification revoked for noncompliance.[6]

If, and only if, the IDRE confirms eligibility, the parties engage in baseball-style arbitration. Both sides submit a "payment amount" and information supporting their offer. *Id.* § 300gg-111(c)(5)(B)(i)–(ii); 29 C.F.R. § 2590.716-8(c)(4)(i)(B). In selecting between the two offers, the IDRE must consider several factors: (1) the "qualifying payment amount" or "QPA," a median representing the insurer's typical payment; (2) "additional circumstances," such as the training and experience of the provider and the "good faith" of the contract negotiations; and finally, (3) "any [other] information relating to such offer submitted by either party." 42 U.S.C. § 300gg-111(c)(5)(B), (C). The IDRE cannot consider the "usual and customary charges," the amounts that would be paid if certain provisions of the NSA did not apply, or the rates paid by "public payor[s]" like Medicare. *Id.* § 300gg-111(c)(5)(D).

The IDRE selects an offer which "best represents the value of the qualified IDR item or service."[7] The IDRE then issues a "binding" award that must be paid in 30 days. 42 U.S.C. § 300gg-111(c)(5)(A), (E)(i)(I), (c)(6). Providers often prevail in these arbitrations. According to

[5] CMS, supra note 3, at 1.

[6] CMS, *Submit a Petition to Revoke the Certification of a Current IDR Entity Providing Dispute Services* (last visited July 28, 2026), https://www.cms.gov/nosurprises/help-resolve-payment-disputes/submit-feedback-on-certified-organizations.

[7] HHS et al., *supra* note 2, at 25.

Highmark, HaloMD has won on behalf of providers in 80% of disputes. Compl. ¶ 53. And the rates that providers have won in these arbitrations have been consistently above the insurers' QPA. *Id.* ¶ 55. In other words, third-party neutrals have determined that insurers are underpaying for services and then submitting lowball offers in the IDR proceedings. Yet even after the award is issued, the losing party can still contest it through the administrative process.[8] The losing party can petition to reopen a dispute for a "jurisdictional" error related to eligibility and the IDRE—alone or as "instruct[ed]" by the agencies—can reopen the dispute and correct the error.[9]

The NSA also creates a 90-day cooling-off period between certain separate disputes. 42 U.S.C. § 300gg-111(c)(5)(E)(ii). After an IDRE resolves a dispute, neither "party" may initiate another IDR process for "the same or similar item or service" for 90 days. 45 C.F.R. § 149.510(c)(4)(vii)(B). The period applies between "a particular provider and a particular health plan." Compl. ¶ 25; *see* 45 C.F.R. § 149.510(c)(3)(i)(B) ("the same plan or issuer"). A "third-party administrator" like Highmark[10] "is not considered the initiating party" when it submits IDR disputes for group health plans; instead, the underlying plan, not the third party administrator, is the applicable "party."[11] Nor is Highmark the "non-initiating party" in such cases that providers initiate.[12] Just as Bromedicon would not be bound by a determination in favor of another provider

[8] CMS, *supra* note 3, at 1.

[9] *Id.* at 5–6.

[10] As Highmark concedes, a "significant portion" of its business is "administrative services only," where Highmark does not agree to financial responsibility for healthcare services itself, but instead merely administers other self-funded plans, such as a plan formed by a labor union or private employer. Compl. ¶ 18.

[11] HHS et al., *Partial Report on the Independent Dispute Resolution (IDR) Process October 1 – December 31, 2022*, at 8 n.22, https://www.dol.gov/sites/dolgov/files/ebsa/pdf_files/partial-report-on-the-idr-process-10-01-2022-to-12-31-2022.pdf.

[12] *Id.* at 17 n.48.

(or required to wait the cooling-off period before initiating the IDR process for the same services as that other provider), one Highmark-administered health plan is not bound by determinations against a separate plan—whether that separate plan is administered by Highmark, Cigna, Aetna, or any other health insurance company.

In establishing this detailed arbitration process and agency oversight regime, Congress chose to keep these disputes out of the courts by strictly limiting judicial review: An IDRE's "determination . . . shall not be subject to judicial review, except in a case" that would allow a court to vacate an award under the Federal Arbitration Act. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

II. Bromedicon And HaloMD Won Hundreds of Arbitrations, and Highmark Now Wants To Vacate Those Awards En Masse.

Bromedicon is a premier neurodiagnostics provider serving patients throughout the country.[13] It provided intraoperative neuromonitoring and other critical services for members of Highmark-administered plans. Compl. ¶ 9. Such cutting edge care helps "improve the safety of high-risk neurosurgical procedures" and "increase the likelihood of successful outcomes in many patients."[14] Highmark underpaid for those critical services. So, when Bromedicon was unable to negotiate a fair payment directly with the plan, it initiated the IDR process, with the assistance of an outside revenue cycle manager, co-defendant HaloMD. Independent arbitrators have often found in favor of medical providers like Bromedicon. *Id.* ¶ 53. That is, the neutral IDREs have (1) reviewed both sides' eligibility information and determined that the disputes are eligible for

[13] *Why Us*, Bromedicon (last visited July 28, 2026), https://bromedicon.com/why-us.html.

[14] Brigham and Women's Hospital, *Intraoperative Neuromonitoring* (last visited November 9, 2025), https://skullbase.bwh.harvard.edu/ionm/; Deletis & Fernandez-Conejero, *Intraoperative Monitoring and Mapping of the Functional Integrity of the Brainstem*, J. Clin. Neurol. (2016), https://pubmed.ncbi.nlm.nih.gov/27449909/.

IDR, (2) reviewed both sides' payment offers and supporting information, and then (3) selected medical providers' payment offers as more reasonable than insurers' offers. *See id.*

In response, Highmark has brought this suit "to put an end to" Bromedicon's success and to evade "hundreds" of IDR awards worth millions of dollars. *Id.* ¶¶ 1, 7. Because the NSA emphasizes finality and efficiency, strictly limits judicial review, and only provides a narrow exception, Highmark couches its assault on the IDR process in terms of purported fraud—isolating a few hundred disputes from the thousands submitted by HaloMD over the past few years to concoct a fraud theory. *Id.* ¶ 47. Highmark's allegations revolve around three theories.

(1) Cooling-off period. Highmark first alleges that Defendants "routinely initiated new IDR disputes for the same procedure codes within the 90-day cooling-off period." *Id.* ¶¶ 41–43. For example, Highmark alleges that Defendants repeatedly initiated disputes bearing the same procedure code 95939 in close succession, violating the cooling-off provision. *Id.* Critically, Highmark does not allege which "non-initiating party" health plans were parties to these disputes.

Highmark's own allegations confirm that it can identify a cooling-off violation by simply comparing parties and numbers. Thus, Highmark had the ability to identify these premature disputes during the IDR process. *Id*. And Highmark had chances to raise this objection at several steps during the process.[15] Highmark does not allege Defendants made some factual misrepresentation for these disputes, only that Defendants pursued disputes that, in Highmark's view, were doomed as a legal matter by procedural requirements.

(2) Submission of evidence. Next, Highmark takes issue with evidence Defendants submitted to the IDREs, which Highmark contends was "cherry-picked," including "information

[15] HHS et al., *supra* note 2, at 13 (during negotiation process); *id.* at 17 (during eligibility stage); 45 C.F.R. § 149.510(c)(1)(iii) (same); 42 U.S.C. § 300gg-111(c)(5)(B)(ii) (during payment stage); CMS, *supra* note 3, at 1 (reopening after award).

from other health plans" in different geographic regions or allegedly stale data. Compl. ¶¶ 5, 68(c). Highmark further alleges that Bromedicon—which provides only neurodiagnostic services—used dissimilar "comparators" in multiple disputes, designed to "skew" the outcome in its favor. *Id.* ¶ 59. Highmark does not allege these data were fake, just that they were "misleading and irrelevant" because Highmark believes they should not be considered "probative" of the proper rates. *Id.* ¶ 68(d). Highmark does not explain how an argument about the credibility of evidence in an arbitration can justify a federal court's after-the-fact intervention.

(3) Contract Negotiation. Lastly, Highmark targets a "generic template" letter that HaloMD allegedly submitted on Bromedicon's behalf in a small subset of IDR disputes. *See* Compl. ¶ 62. The alleged letter includes "placeholders" meant to be filled in with the names of relevant parties and raises the possibility of a negotiation about "fair contract rate[s]." *Id.* Highmark contends it has no record of receiving this letter. *Id.* ¶ 61. But notably, Highmark concedes that Bromedicon and Highmark **did negotiate** to enter a contract, and Highmark has "email" evidence to support the existence and quality of the negotiations. *Id.* ¶ 63.

Moreover, and critically, Highmark's complaint does **not** contain any allegation of actual fraud that would satisfy Rule 9(b) and allow a court to vacate an arbitration award under the FAA. Highmark does not allege any bribery, corrupt or conflicted IDREs, perjured testimony, or threats. It does not seek vacatur under 9 U.S.C. § 10(a)(2) for "evident partiality" of "the arbitrators." Nor does it allege that Bromedicon ever instructed HaloMD to pursue ineligible claims or submit false evidence. Nevertheless, Highmark first asks the Court to vacate hundreds of awards, then attempts an end-run around the NSA with a slew of collateral state-law claims seeking damages.

ARGUMENT

I. This Court Lacks Subject-Matter Jurisdiction (Counts II–VI).

Highmark's Complaint suffers from many fatal flaws. At the outset, this Court lacks jurisdiction over Highmark's claims for monetary damages and prospective relief, including Counts II through VI. Congress spoke clearly when adopting the NSA: "A determination of a certified IDR entity . . . **shall not be subject to judicial review**," other than in a case that would permit **vacatur** under the Federal Arbitration Act ("FAA"). 42 U.S.C. § 300gg-111(c)(5)(E)(i) (emphasis added); *see* 9 U.S.C. § 10(a). Given this express incorporation, courts have recognized that the exclusive means to challenge an IDR award is to seek vacatur under the FAA. *See, e.g.*, *HaloMD GA*, 2026 WL 2017291, at *12–13. Indeed, the "NSA expressly **bars** judicial review of IDR awards **except** as to the specific provisions borrowed from the" FAA that allow vacatur. *Guardian Flight, LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025) (emphasis original) (hereafter *Guardian Flight I*).

The FAA, in turn, prohibits direct actions that seek "damages for an alleged wrongdoing that compromised an arbitration award and caused the party injury[.]" *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 910 (6th Cir. 2000); *see Ctr. for Excellence in Higher Educ. v. Accreditation All. of Career Schools & Coll.*, 166 F.4th 452, 460–61 & n.3 (4th Cir. 2026) (collecting cases from multiple circuits). "When the ultimate objective of a suit is to rectify the alleged harm caused by an unfavorable arbitration award, a party must follow the proper procedure for challenging an arbitration award under the" Act. *Bachman Sunny Hill Fruit Farms, Inc. v. Prods. Agric. Ins.*, 57 F.4th 536, 542 (6th Cir. 2023) (citation modified); *see Sathianathan v. Pac. Exch., Inc.*, 2006 WL 8457337, at *1 (D.N.J. Mar. 15, 2006) ("[T]he FAA is the exclusive remedy for challenging acts that taint an arbitration award[.]").

Highmark's supposedly "independent" claims are all impermissible collateral attacks. Compl. ¶ 15. The same alleged misrepresentations animate all of Highmark's claims, including vacatur. *See id.* ¶¶ 89, 98, 105, 110, 120. Attempting to allege "wrongdoing that would justify vacatur is a sign of a collateral attack." *Tex. Brine Co. v. Am. Arb. Ass'n*, 955 F.3d 482, 489 (5th Cir. 2020). And the alleged harms "all flowed from . . . issues[s] in front of the arbitrator." *Ctr. for Excellence*, 166 F.4th at 461. Highmark has not alleged any injury apart from the IDR proceedings. *See* Compl. ¶¶ 77–78, 94. These are "appropriately remedied," if at all, "through Section 10 of the [Federal Arbitration Act.]" *Ctr. for Excellence*, 166 F.4th at 461.

Addressing similar allegations, one court recently held that "the NSA precludes judicial review of IDR determinations, **regardless of the legal theory** under which judicial review is sought[,]" **for any claim other than vacatur**. *HaloMD CA*, 2026 WL 982629, *2 (emphasis added). The court dismissed the plaintiff's non-vacatur claims because they "cannot be adjudicated without reviewing the correctness of past IDR awards or inserting the district court in overseeing future IDR awards." *Id.* at *10. Other courts have held similarly. *Unitedhealthcare of Pa.*, 2026 WL 1145885, at *14 ("We decline to . . . bypass Congress's intent in the No Surprises Act . . . in limiting judicial review because UnitedHealthcare believes the No Surprises Act leaves it with an inadequate remedy."); *HaloMD GA*, 2026 WL 2017291, at *11–17 (dismissing claims "because the Plaintiff intends to use its [non-vacatur claims] to collaterally attack IDR awards against it and such claims would require the Court to review the findings of the IDRE"); *HaloMD TX*, 2026 WL 1557492, at *5 (dismissing claims because "[b]ased on Plaintiff's own interpretation of its request for damages, it seeks payment that is largely co-extensive with the losses it allegedly sustained in the form of IDR awards decided against it"). This Court should do the same and dismiss Counts II through VI under Rule 12(b)(1).

II. All of Highmark's Claims Must Be Dismissed Under Rule 12(b)(6).

Apart from subject matter jurisdiction, Highmark's claims fail on the merits. First, Highmark has failed to allege Bromedicon's role in the alleged fraud with particularity under Rule 9(b). Second, Highmark has failed to allege a claim for vacatur under the FAA's arduous standard. Third, issue preclusion bars Highmark's attempts to relitigate IDREs' settled determinations. Fourth, the Noerr-Pennington doctrine bars liability for Bromedicon's use of the federally-created IDR process. Fifth, Highmark's state-law claims fail for independent reasons.

A. The Complaint Fails To Allege Bromedicon's Role in the Fraud With Particularity Under Rule 9(b) (Counts I–VI).

"[C]laims alleging fraudulent activity" must be pled with "particularity" under Rule 9(b). *Travelers Indem. Co. v. Cephalon*, 620 F. App'x 82, 85 n.3 (3d Cir. 2015). "Under that standard, the complaint must describe the time, place, and contents of the false representations or omissions, as well as the identity of the person making the statement and the basis for the statement's falsity," i.e., the "who, what, when, where and how" of the fraud. *Migliore v. Vision Solar LLC*, 160 F.4th 79, 90–91 (3d Cir. 2025) (citation omitted).

In another case attempting to vacate an NSA IDR award, the Eleventh Circuit recently emphasized Rule 9(b)'s steep requirement that plaintiffs allege "precisely what statements" were at issue, the "time and place of each such statement and the person responsible for making . . . them," and "the manner in which they misled the plaintiff." *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1121–23 (11th Cir. 2025) (dismissing attempt to attack awards issued under the No Surprises Act's IDR process) (citation omitted).

Highmark fails to particularly allege Bromedicon's involvement in the alleged fraud. Plaintiffs cannot combine the actions of various entities; they must identify the "person" who performed each harmful act. *Migliore*, 160 F.4th at 90; *Butakis v. NVR, Inc.*, 668 F. Supp. 3d 349,

359 (E.D. Pa. 2023). Highmark nowhere alleges that Bromedicon itself, nor any individual employee, submitted false statements or instructed HaloMD to do so. Rather, Highmark largely lumps the Defendants' collective actions together without differentiating what Bromedicon actually did. *See, e.g.*, Compl. ¶ 43(c), (h) ("Bromedicon, or HaloMD on behalf of and in coordination with Bromedicon" submitted disputes). At best, Highmark musters a legal conclusion that "HaloMD acted as Bromedicon's agent[.]" *Id.* ¶ 11. This conclusory allegation fails to satisfy Rule 8, let alone Rule 9(b). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

B. Highmark Has Not Met the High Standard to Vacate Hundreds of IDR Awards (Count I).

Nor has Highmark sufficiently alleged its vacatur claim. The Third Circuit has emphasized the "presumption that [an arbitration] award is enforceable," and can be disturbed "only under . . . exceedingly narrow circumstances." *Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240, 251 (3d Cir. 2013) (citation omitted). Highmark asks to vacate hundreds of awards at once. The Complaint raises two bases: (1) that Bromedicon won IDR arbitration awards by "fraud" or "undue means" under 9 U.S.C. § 10(a)(1); and (2) the IDREs exceeded their powers under 9 U.S.C. § 10(a)(4). Both fail.[16]

Not Fraud. To vacate an award for fraud or undue means, the challengers must make three threshold showings: (1) "fraud in the arbitration . . . with clear and convincing evidence"; (2) that "was not discoverable through reasonable diligence before or during the arbitration"; and (3) "was material[]." *Facta Health v. Pharmadent LLC*, 2024 WL 4345299, at *7 (3d Cir. Sept. 30, 2024).

[16] Highmark also alleges a "significant portion of Highmark's business" is administering self-insured groups, which "bear the full cost of healthcare claims" and "immediately absorb" the cost of paying IDR awards. Compl. ¶ 18. Despite seeking vacatur of hundreds of awards, Highmark fails to distinguish which IDR awards Highmark itself paid (if any) as opposed to those a self-insured group paid. Highmark provides no allegations supporting its authority sue to vacate awards it did not pay.

Fraud means "misconduct rather than mistake," *AT&T v. Concepcion*, 563 U.S. 333, 350–51 (2011), and includes things like "bribery, undisclosed bias of an arbitrator, or willfully destroying or withholding evidence," *Guardian Flight, LLC v. Med. Evals. of Tex ASO, LLC*, 140 F.4th 613, 621 (5th Cir. 2025) (citation omitted). Fraud is not mere "wrangling over facts," *Neal v. Asta Funding, Inc.*, 2016 WL 3566960, at *19 (D.N.J. June 30, 2016); it is not "mischaracteriz[ing]" evidence, *Lex v. Weinar*, 2015 WL 1455810, at *5 (E.D. Pa. Mar. 31, 2015); it is not "[o]ffering a meritless" arguments, *A.G. Edwards & Sons. v. McCollough*, 967 F.2d 1401, 1403–04 (9th Cir. 1992); and it is not "fail[ing] . . . to prove the other side's case[.]" *Biotronik Mess-Und Therapiegeraete v. Medford Med. Instrument Co.*, 415 F. Supp. 133, 137 (D.N.J. 1976).

Highmark offers three "fraud" theories. Starting with Highmark's cooling-off period allegations, Highmark nowhere alleges which specific health plans were involved in these disputes, so it does not establish if the cooling-off period even applies.[17] More fundamentally however, Highmark cannot show the alleged cooling-off misrepresentations were "not discoverable through reasonable diligence[.]" *Facta Health* , 2024 WL 4345299, at *7. Highmark receives notifications of IDR initiations, could see applicable identifying information, and could compare them against its own records and prior determinations. It had multiple opportunities to object before the IDRE decides eligibility. *See id.* (no due diligence when "based on documents . . . presented at the hearing"). Highmark's complaint that the NSA does not provide it with enough time to perform "reasonable diligence" is a veiled attack on the statutory scheme itself. Compl. ¶ 47. Under Highmark's theory, "nearly every eligibility determination disputed by an IDR participant would be subject to review in federal court." *HaloMD CA*, 2026 WL 982629, at *8. That would undermine "the NSA's creation of a streamlined IDR process for

[17] HHS et al., *supra* note 11, at 8 n.22.

resolving surprise billing disputes and its limitations on judicial review." *Id.* Highmark also does not explain how an organization that advertises it processed "more than 229 million claims" in 2024, lacked capacity to address approximately four hundred arbitration disputes.[18] *See Iqbal*, 556 U.S. at 678 (requiring "sufficient factual matter" to plausibly allege a claim).

Turning to Highmark's allegations about supposedly "irrelevant" payment evidence, they are a non-starter. Bromedicon could not have committed fraud by zealous advocacy or merely "mischaracteriz[ing]" evidence. *Lex*, 2015 WL 1455810, at *5. Parties are expressly permitted to submit evidence they believe "relat[es] to" the reasonable value of the services. 42 U.S.C. § 300gg-111(c)(5)(B)(ii). And even then, IDREs have a duty to ignore irrelevant evidence. 45 C.F.R. § 149.510(c)(4)(iii)(E). Further, a court cannot vacate an award based on a "conclusory statement that the arbitrator . . . based its decision on . . . evidence the arbitrator is not allowed to consider." *Worldwide Aircraft Servs., Inc. v. Cigna Health & Life Ins.*, 2026 WL 234015, at *3 (M.D. Fla. Jan. 29, 2026) (emphasis omitted).

Highmark's allegations about good faith negotiations likewise fail to establish a cognizable claim for vacatur. Highmark and Bromedicon indisputably negotiated, and Highmark does not allege Bromedicon misrepresented the existence of those negotiations. Compl. ¶ 63. The negotiations also indisputably did not result in agreements. As for statements about the quality of those negotiations—who engaged in good faith and who did not—that presents an entirely subjective question at odds with any type of fraud inquiry. Restatement (Third) of Torts § 14 ("False statements of opinion ordinarily are not actionable.").

[18] *About Us: Fast Facts*, Highmark Health (last visited July 24, 2026), https://www.highmarkhealth.org/annualreport2024/about/fastfacts.shtml.

Highmark gets no further with its allegations regarding the form negotiations letter, which it asserts was submitted as a piece of evidence in a subset of IDRs with a statement that Bromedicon had attempted to negotiate with Highmark regarding a potential agreement. Highmark asserts "on information and belief" that this particular letter was never sent—though, it concedes that Bromedicon and Highmark communicated at length. *Id.* ¶¶ 61–63. Highmark alleges the letter was in a more "polished" and persuasive "format[]" than the various communications it admits receiving, while at the same time attacking the letter's format as a "repurposed" "generic template" without "actual party names." *Id.* Highmark's theories contradict one another; they do not plead with particularity a fraud.

The letter also is clearly an **invitation** to enter future negotiations. *Id.* ¶ 62 ("We are eager to discuss the possibility of transitioning to an in-network status with your health plan and negotiate a fair contract rate[.]"). The letter does not characterize the negotiations that occurred—good faith or otherwise. Highmark insists the letter bore "indicia of inauthenticity[,]" which was plainly apparent on its "face." *Id.* But in making that claim, Highmark necessarily concedes that the same "indicia" were **equally apparent to IDREs**.[19] Asserting an allegation on information and belief that a letter was both "polished" and "generic"—particularly when Highmark admits negotiations occurred and any issues with the letter were plain on its face for the arbitrator to evaluate—does not create a basis to overturn multiple arbitration awards. *See Aventis Pharma S.A. v. Amphastar Pharms., Inc.*, 2009 WL 8727693, at *13 (C.D. Cal. Feb. 17, 2009) (finding no fraud where the decisionmaker could "detect the alleged false representation itself").

[19] By contrast, Highmark had email evidence it concedes reflected the parties' negotiations. Compl. ¶ 63.

Furthermore, the alleged letter did not exist in a vacuum. Instead, IDREs must consider numerous factors before selecting an award. 42 U.S.C. § 300gg-111(c)(5)(C). Bromedicon's form invitation to negotiate at most goes to one aspect of one such factor—"[d]emonstrations of good faith efforts (or lack of good faith efforts) made by the nonparticipating provider or nonparticipating facility or the plan or issuer to enter into network agreements . . . during the previous 4 plan years." *Id.* § 300gg-111(c)(5)(C)(ii)(V). As the Eleventh Circuit recently held in refusing to vacate an NSA IDR award, where the arbitrator "considered evidence regarding multiple factors" and "ultimately determined that [one party's] offer was the better one," that does not supply a basis to vacate. *Reach Air*, 160 F.4th at 1123.

Moreover, Highmark knew the supposed "real" state of the disputed facts before every IDR proceeding and had the ability to present them to IDREs for consideration. *See HaloMD CA*, 2026 WL 982629, at *8 (dismissing fraud allegations where plaintiff knew the relevant facts and objected). Whether or not Highmark received this form letter inviting negotiations, Highmark has known the status of contract negotiations all along and had the opportunity to raise its version of events to IDREs in every IDR proceeding. Compl. ¶ 63. Regardless of its awareness of the particular letter, it knew the parties' "actual email communications[,]" *id.*—if there had been no negotiations (such that the letter was actually false), Highmark could raise that in each instance.

At bottom, Highmark's allegations are little more than a veiled assault on the IDR process that Congress established and agencies have implemented. But "the wisdom of Congress's policy choice is beyond [courts'] judicial ken." *Guardian Flight I*, 140 F.4th at 277. Highmark's complaints are properly directed to Congress, which "designed the IDR process to create an efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs." *Reach Air*, 160 F.4th at 1119 (alterations omitted).

Not Exceeding Powers. Highmark next seeks vacatur under § 10(a)(4), arguing that the IDREs "exceeded their powers." Compl. ¶ 85. The Complaint comes nowhere close to carrying this "heavy burden." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013). Courts do not "correct [] mistakes" under this provision, even to fix "grave error[s]"; instead they ask only whether the arbitrator was "even arguably" performing the assigned task. *Id.*; *see Reach Air*, 160 F.4th at 1120 (whether the IDRE "performed the assigned task"); *GPS of N.J. MD, P.C. v. Aetna, Inc.*, 2024 WL 414042, at *4–5 (D.N.J. Feb. 5, 2024) (similar, rejecting IDR vacatur).

IDREs indisputably possess authority to determine eligibility. 45 C.F.R. § 149.510(c)(1)(v). This claim thus must be dismissed. *HaloMD GA*, 2026 WL 2017291, at *24 ("[I]t is not the role of the Court to determine whether [an IDRE's] jurisdictional determination is right or wrong[.]").

C. Issue Preclusion Bars Highmark From Relitigating Counts II–VI.

Issue preclusion independently bars Counts II through VI because all of these supposedly "independent" and "alternative" claims require Highmark to challenge the binding determinations the IDREs already made. Issue preclusion "prevents relitigation of a particular fact or legal issue that was litigated in an earlier action." *Seborowski v. Pitt. Press Co.*, 188 F.3d 163, 169 (3d Cir. 1999). "[I]ssue preclusion is not limited to those situations in which the same issue is before two courts." *B&B Hardware v. Hargis Indus.*, 575 U.S. 138, 147–48 (2015). Arbitration awards have "issue preclusive effect" too. *Seborowski*, 188 F.3d at 169. The preclusive nature of IDR arbitrations is especially clear here: Congress legislates "with the expectation that [issue preclusion] will apply except when a statutory purpose to the contrary is evident," *B&B*, 575 U.S. at 148, and the NSA makes IDRE determinations "binding." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).

Under federal law, issue preclusion bars relitigating a settled issue where (1) the issue "is the same as that involved in the prior action"; (2) "was actually litigated"; (3) "was determined by

a final and valid judgment"; and (4) "was essential to the prior judgment." *Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 288 F.3d 519, 525 (3d Cir. 2002) (citation modified). All four elements are met. First, IDRE eligibility determinations underlie all of Highmark's claims. Compl. ¶¶ 93, 98, 105, 110, 116, 120. Second, the issue was actually litigated because an eligibility determination was made for each award. 45 C.F.R. § 149.510(c)(1)(v); *see also ITT Corp. v. Intelnet Int'l*, 366 F.3d 205, 211 n.10 (3d Cir. 2004). Third, "a valid and final award by arbitration has the same effect[] . . . as a judgment of a court." Restatement (Second) of Judgments § 84. Fourth, eligibility is essential to any IDR award. 45 C.F.R. § 149.510(c)(1)(v). Even assuming jurisdiction, then, the claims are barred.

D. The Noerr-Pennington Doctrine Bars Counts II–VI.

Counts II through VI are also barred by the Noerr-Pennington doctrine, which protects the right to petition under the First Amendment. *See United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 669–70 (1965). The doctrine means that petitioning activity "cannot serve as the basis of tort liability." *Brownsville Golden Age Nursing Home v. Wells*, 839 F.2d 155, 160 (3d Cir. 1988). Courts apply Noerr-Pennington to protect petitioning quasi-public bodies like the arbitration proceedings here. *See, e.g.*, *Pa. State Univ. v. Keystone Alternatives LLC*, 2020 WL 4677246, at *3–4 (M.D. Pa. Aug. 12, 2020).

The Noerr-Pennington doctrine protects Bromedicon's right to petition through the IDR process. The IDR process was created by Congress and established through the collaboration of several agencies. *See* 42 U.S.C. § 300gg-111(c)(2)(A). And Congress (along with those agencies) mandated a process to certify IDREs—who must abide by the rules laid out in the NSA to maintain their government-certified status. *Id.* § 300gg-111(c)(4)(A). The First Amendment protects Defendants from liability based on their petitioning efforts in that IDR process.

Highmark fails to allege facts showing the narrow "sham" exception saves these claims.

The "sham" exception is a "two-step process." *Armstrong Surgical Ctr. v. Armstrong Cnty. Mem'l Hosp.*, 185 F.3d 154, 158 n.2 (3d Cir. 1999). First, the Court must ask whether the petition is "objectively baseless." *Id.* "[I]f not, the petition is not a sham," and the analysis ends. *Id.* And "[a] winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham." *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60 n.5 (1993). Second—and "[o]nly if [a petition] is [found] objectively meritless"—does the Court ask about "subjective motivation" to weaponize the "process . . . as opposed to the outcome. *Id.* at 60–61.

Highmark fails at both. That Bromedicon routinely won IDR awards necessarily means its petitions were not objectively baseless. *Id.* at 60 n.5. And Highmark has failed to allege any basis to infer Bromedicon petitioned "for any purpose other than" winning IDR awards. *Armstrong*, 185 F.3d at 158; *see Campbell v. Pa. Sch. Boards Ass'n*, 972 F.3d 213, 227 (3d Cir. 2020).

E. The Remaining State Claims Fail On The Merits.

Beyond the defects described above, each state-law claim fails for other reasons too.

Fraud and Misrepresentation (Counts II & III). Both common law fraud and negligent misrepresentation claims under Pennsylvania law require justifiable reliance "by the injured party." *Feudale v. Aqua Pa. Inc.*, 122 A.3d 462, 466 n.5 (Pa. Commw. Ct. 2015) (fraud); *see Rigante v. Rockford Homes, LLC*, 2022 WL 2903259, at *7 (Pa. Super. Ct. 2022) (negligent misrepresentation). While Highmark asserts the legal conclusion that it "relied," Compl. ¶ 92, no facts support that assertion.

In any event, reliance here was not "justifiable." *Zaftr Inc. v. Lawrence*, 2023 WL 349256, at *29 (E.D. Pa. Jan. 20, 2023) (no duty for negligent misrepresentation in "arm's length" transaction, thus no justifiable reliance); Compl. ¶ 35 (attestations "to the best of my knowledge"). As explained above, Highmark alleges it knew the supposedly "true" facts all along.

Finally, negligent misrepresentation requires a misrepresentation of "material **fact**." *Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 646 (Pa. 2021) (emphasis added). Whether a dispute "qualifie[s]" for IDR, Compl. ¶ 35, whether certain evidence is relevant, *id.* ¶ 57, or whether Highmark's efforts were "good faith," *id.* ¶ 60, are either assertions of law or opinions, not facts.

Civil conspiracy (Count IV). Highmark pleads that HaloMD "acted as Bromedicon's agent," Compl. ¶ 11, but "an entity cannot conspire with one who acts as its agent," *Abadi v. Target Corp.*, 2023 WL 4045373, at *1 (3d Cir. June 16, 2023). Further, Highmark fails to allege any malicious agreement to harm Highmark. *Williams v. Roc Nation*, 2020 WL 6158242, at *8 (E.D. Pa. Oct. 21, 2020). And this claim cannot stand alone and should be dismissed along with the other torts. *U.S. Att'y Gen. v. PNC Bank*, 2008 WL 11515399, at *3 (E.D. Pa. May 8, 2008).

Unjust enrichment and declaratory judgment (Counts V & VI). These claims "cannot stand alone" either. *Danieli Corp. v. SMS Grp.*, 2024 WL 3791894, at *17 (W.D. Pa. Aug. 13, 2024); *see Campbell v. Pa. Sch. Boards Ass'n*, 336 F. Supp. 3d 482, 504 (E.D. Pa. 2018).

III. The Court Should Grant Attorney Fees Under Pennsylvania's Anti-SLAPP Statute.

As a final matter, Pennsylvania's Uniform Public Expression Protection Act provides mandatory fee-shifting to a party who successfully defeats a "cause of action based on" First Amendment petitioning. *See* 42 Pa. C.S. § 8340.13, .15, .18. When the plaintiff fails to state such a claim, "the court shall award the [defending] party attorney fees," "costs" and "expenses." *Id.* § 8340.18(a)(1). Highmark's state claims are "based on" petitioning activity, and Bromedicon respectfully requests that this Court award fees and costs under UPEPA. *See Lento Law Grp. v. Estrada*, 2026 WL 2100471, at *12–16 (E.D. Pa. July 21, 2026) (granting fees under UPEPA).

CONCLUSION

For these reasons, the Court should dismiss the Complaint with prejudice.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, a copy of Defendant's Brief In Support of its Motion to Dismiss Plaintiff's Complaint And Award Fees was served on counsel of record via the U.S. District Court for the Western District of Pennsylvania's CM/ECF system.

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