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-1175-NR

PLAINTIFF HIGHMARK'S OMNIBUS BRIEF IN OPPOSITION TO DEFENDANTS BROMEDICON'S AND HALOMD'S MOTIONS TO DISMISS

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I. INTRODUCTION

Bromedicon and HaloMD tellingly ignore the central factual allegation the Court must accept as true at this stage: they procured IDR awards using fabricated evidence. They submitted the Sham Letter as evidence that Bromedicon had invited Highmark to negotiate on in-network contract rates and that Highmark had failed to respond. Highmark alleges that it never received the Sham Letter and could not see or rebut it during the blind IDR process. The IDR entities nevertheless relied on that evidence and issued awards based on it, calling it "the most persuasive" evidence and, in one determination, describing the Sham Letter as "compelling." In sum, the awards were procured by fraud and must be vacated.

These allegations are central to the broader scheme alleged in the Complaint. Bromedicon and HaloMD used false submissions to obtain IDR awards they knew they were not entitled to receive. Rather than address those allegations, Bromedicon and HaloMD unpersuasively attempt to equate this case with other payor cases in which courts rejected payors' challenges to IDR determinations. But those courts recognized that vacatur is an appropriate remedy where an IDR award is procured by fraud or where the IDR entity exceeded its authority. That is exactly what happened here. Unlike the payors in those prior cases, Highmark plausibly alleges facts that more than satisfy that standard. Those cases involved ***known*** eligibility disputes: the insurers knew the facts underlying their objections, raised—or had an opportunity to raise—the objections during IDR, and lost. Highmark alleges the opposite. The Sham Letter was concealed in blind submissions, was never sent to Highmark, and was discovered only after the proceedings ended. Highmark also alleges a pattern of cooling-off violations that was not reasonably detectable within the short objection period. Neither vacatur theory asks the Court to revisit an IDR entity's judgment about the appropriate payment amount.

Highmark's claims seek to preserve the integrity and fairness of the IDR process. Congress made IDR determinations binding only "in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). It also preserved judicial review where an award was "procured by corruption, fraud, or undue means" or where "the arbitrators exceeded their powers." *Id.* § 300gg-111(c)(5)(E)(i)(II); 9 U.S.C. § 10(a)(1), (4). Count I invokes those express grounds for vacatur. Counts II through VI seek ordinary remedies for separate misconduct and injuries—including administrative fees, investigative costs, and harm to Highmark's business relationships—that vacatur cannot redress.

Bromedicon and HaloMD take the opposite approach. They invoke a series of procedural doctrines to argue that no court may examine whether they used fabricated evidence and concealed ex parte submissions to obtain IDR awards. The statute says otherwise. The NSA protects the finality of *legitimate* payment determinations; it does not shield awards procured through concealed fraud or eliminate remedies for independent misconduct and injuries. Enforcing the safeguards Congress enacted ensures that the IDR system remains fair and works as intended. Treating the blind submission process as a bar to accountability would undermine that system.

Highmark addresses each of Bromedicon's and HaloMD's arguments in turn. The Complaint plausibly pleads both statutory grounds for vacatur and the alleged fraud with particularity; the NSA does not strip the Court of jurisdiction over Highmark's independent tort claims; HaloMD is subject to personal jurisdiction in Pennsylvania; and neither issue preclusion, *Noerr-Pennington*, Pennsylvania's anti-SLAPP law, nor the remaining procedural defenses support dismissal. Accordingly, the Court should deny both motions.

II. LEGAL STANDARD

Bromedicon and HaloMD seek dismissal under Rules 12(b)(1), 12(b)(2), and 12(b)(6). "There are two types of Rule 12(b)(1) motions: those that attack the complaint on its face and those that attack subject matter jurisdiction as a matter of fact." *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 n.3 (3d Cir. 2006). "When considering a facial attack, the Court must consider the allegations of the complaint as true." *Id.* Defendants' jurisdictional challenges are facial: they dispute no jurisdictional facts but instead contend, as a matter of law, that the NSA's limitations on judicial review foreclose Highmark's claims. The Court therefore must accept all well-pleaded factual allegations as true and draw all reasonable inferences in Highmark's favor. *Geness v. Admin. Off. of Pa. Cts.*, 974 F.3d 263, 269 (3d Cir. 2020) (citation omitted).

The Third Circuit has "repeatedly cautioned" against allowing a Rule 12(b)(1) motion to dismiss to be "turned into an attack on the merits" and instructs that where the merits and jurisdiction "are so intertwined," courts should "find that jurisdiction exists" and employ the 12(b)(6) rubric. *Davis v. Wells Fargo*, 824 F.3d 333, 348 (3d Cir. 2016) (quoting *Kulick v. Pocono Downs Racing Ass'n*, 816 F.2d 895, 898 n.5 (3d Cir. 1987)). And where the asserted jurisdictional defect is that the plaintiff lacks a legally viable claim, "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Id.* at 349 (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946)).

With respect to HaloMD's personal jurisdiction argument under Rule 12(b)(2), Highmark "need only establish a prima facie case of personal jurisdiction." *Matthews Int'l Corp. v. Lombardi*, No. 2:20-cv-00089, 2020 U.S. Dist. LEXIS 45728, at *8-9 (W.D. Pa. Mar. 17, 2020) (Ranjan, J.) (citations omitted). The Court "accept[s] as true the allegations of the pleadings and all reasonable inferences, and … resolve[s] all factual disputes in favor of the plaintiff." *Id.*

Under Rule 12(b)(6), the Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Montemuro v. Jim Thorpe Area Sch. Dist.*, 99 F.4th 639, 641 n.1 (3d Cir. 2024). For claims sounding in fraud, Rule 9(b) requires a plaintiff to "state with particularity the circumstances constituting fraud"—that is, the "who, what, when, where, and how." *United States ex rel. Bookwalter v. UPMC*, 946 F.3d 162, 168, 176 (3d Cir. 2019). But "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). Rule 9(b)'s heightened pleading standard applies to the circumstances constituting the alleged 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) (explaining that Rule 9(b) requires particularity as to the "precise misconduct" alleged).

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. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Those grounds include where an award was "procured by corruption, fraud, or undue means," and where the arbitrator "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 Highmark ultimately must prove fraud by clear and convincing evidence, that

evidentiary 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 II above.

Two aspects of *France* are particularly important here. First, "reasonable diligence does not require parties to assume the other side is lying." *Id.* at 380. Second, materiality is a "relatively forgiving" standard: the movant "need not demonstrate that the arbitrator[] would have reached a different result," but need only establish 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)).

i. The Complaint Plausibly Alleges Fraud in the IDR Proceedings

The Complaint does not rely on generalized accusations of aggressive advocacy or occasional eligibility errors. It alleges specific false representations and fabricated evidence submitted in identified IDR proceedings, together with a broader pattern supporting a plausible inference that the misconduct was knowing. *See* Compl. ¶¶ 39-76, Dkt. No. 1. Although the Complaint also alleges that Defendants used misleading, cherry-picked reimbursement data to support the QPA, it does not claim that every dispute over QPA evidence is fraud. The more specific fraud theory tied to the awards is that Defendants falsely told IDREs that Highmark had not engaged in negotiations over in-network rates and submitted supposed correspondence that Highmark never received, even though Highmark had in fact engaged in efforts to negotiate rates and contractual agreements. The cooling-off theory is different: it concerns false eligibility attestations used to initiate disputes during the statutory 90-day cooling-off period.

The fabricated correspondence provides the clearest example. Highmark alleges that, in at least five specifically identified proceedings—DISP-1851702, DISP-3528869, DISP-2024426, DISP-3026241, and DISP-3060503—Defendants submitted as "Exhibit 5" a document styled as a

"Request for In-Network Contract Rates" (the "Sham Letter"). Compl. ¶¶ 61-68. The Complaint alleges that Defendants presented that document as evidence that Bromedicon had "extended a formal invitation" to negotiate and that Highmark "had not reciprocated." *Id.* ¶ 68(a). But Highmark alleges that it never received the Sham Letter and that the document bears multiple indicia of fabrication: generic placeholders rather than the parties' actual names, references to a Texas health plan rather than Highmark's Pennsylvania service area, and incorrect contact information for Bromedicon. *Id.* ¶¶ 61-62. The actual communications between Highmark and Bromedicon, moreover, bear no resemblance to the Sham Letter and instead show that Highmark engaged in communications aimed at establishing in-network reimbursement rates and contractual arrangements. *Id.* ¶¶ 60, 63.

Those allegations fit comfortably within *France*. The Third Circuit recognized that "[o]btaining an award by perjured testimony constitutes fraud" and that, for purposes of § 10(a)(1), knowingly concealing evidence is analogous to perjured testimony. 43 F.4th at 378 (citations omitted). Highmark alleges that Defendants fabricated a document and knowingly submitted it to the IDR entity as authentic evidence that Bromedicon sought to negotiate and Highmark failed to reciprocate, when the parties' actual communications show otherwise. *See, e.g.*, Compl. ¶¶ 56-57. Those allegations plausibly allege fraud within the meaning of *France*; whether the submissions were false or misleading, and whether Defendants acted knowingly, cannot be resolved at the pleading stage.

Nor are the QPA allegations merely a generalized challenge to the weight of evidence. The Complaint identifies DISP-1851702, describes reimbursement data drawn from other payors and materially different geographic regions and time periods, including pre-NSA data, and alleges that similar data appeared in additional identified proceedings. Compl. ¶¶ 56-59, 68(c)-(e). It alleges

that Defendants presented non-comparable information as representative of Highmark's QPA and to support inflated offers. Whether that information was in fact comparable, relevant, or materially misleading is a factual question; the Sham Letter allegations independently provide a concrete example of a purportedly fabricated submission tied to specific determinations.

The Complaint likewise plausibly alleges that the cooling-off violations were not isolated eligibility mistakes. It identifies repeated instances in which Defendants initiated new disputes for the same services only days after receiving determinations expressly notifying them of the 90-day restriction. On July 2, 2024, for example, an IDR entity issued a determination for procedure code 95937 notifying Defendants that they could not submit a subsequent dispute "involving Highmark" for the same or similar services within 90 days. Compl. ¶ 43(a). Two days later, Defendants initiated three new disputes for that same procedure code. *Id.* Similar conduct allegedly occurred with multiple other procedure codes: three new disputes one day after a determination for code 95941, another dispute on the same day as a determination for code 95938, and another one day after a determination for code 95939. *Id.* ¶ 43(b)-(h). In each instance, Defendants attested that the new dispute was eligible despite the prior notice.

The repeated pattern alleged, coupled with the individualized notice provided in the preceding determinations, supports a plausible inference that the attestations were knowing rather than inadvertent. The volume of filings matters not because volume alone establishes fraud, but because, as recognized in other cases, it supports Highmark's allegation that the misconduct operated as a broader scheme and helps explain why the pattern was difficult to recognize one dispute at a time. That reasoning finds support in Second Circuit authority recognizing that fragmented individualized proceedings can obscure an overarching fraud visible only when claims are examined collectively. *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" visible only when claims are examined collectively); *Gov't Emps. Ins. Co. v. Patel*, 166 F.4th 280, 291-93 (2d Cir. 2026) (same).

Bromedicon's argument that Highmark has not identified the specific health plans involved is not a basis for dismissal. *See* Bromedicon Br. at 13, Dkt. No. 26. Exhibit B identifies the challenged determinations by claim number, dispute number, billing code, and date, while the Complaint provides specific examples of successive filings made within the alleged cooling-off periods. Compl. ¶¶ 40-48 & Ex. B, Dkt. No. 1-2. Whether particular disputes ultimately involved different statutory "parties" is addressed below; it does not erase the specific allegations of knowingly false eligibility attestations. HaloMD's suggestion that the submissions may instead reflect a "mistake" or the submission of irrelevant information, HaloMD Br. at 16, merely offers a competing characterization of the alleged facts. At this stage, the Court must accept Highmark's well-pleaded allegations and draw reasonable inferences in its favor. *Montemuro*, 99 F.4th at 641 n.1.

Bromedicon's limited response to the Sham Letter allegations fares no better. It argues that because the IDR entities reviewed the Sham Letter without detecting the alleged fabrication, the document cannot support vacatur. Bromedicon Br. at 15. That reasoning is fundamentally flawed. Section 10(a)(1) exists precisely because fraud may succeed in deceiving the decisionmaker—here, the IDR entity. And the Complaint alleges that the Sham Letter did just that. According to the Complaint, the IDR entities described Defendants' evidence of "good faith contract negotiations" as "the most persuasive" evidence and, in at least one determination, expressly characterized the Sham Letter as "compelling" support for Bromedicon's offer. Compl. ¶ 68(a)-(b).

ii. The Complaint Plausibly Alleges That the Fraud Was Not Discoverable Through Reasonable Diligence

Highmark pleads non-discoverability separately for each category of misconduct. As to the Sham Letter and related negotiation representations, it identifies the proceedings in which those materials were allegedly submitted and alleges that Highmark could not see them until after the proceedings, when certain IDR entities provided the submission packages. Compl. ¶¶ 60-68. As to the cooling-off violations, the Complaint identifies successive filings and alleges that detecting the pattern required comparing new disputes against prior determinations involving the same service, provider, and payor across a rolling 90-day period, all within the short objection window. *Id.* ¶¶ 40-48, 53-55, 92. Those allegations explain both the particular 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 IDR process is blind. Each party submits its offer and supporting materials without access to the other side's submission. *Id.* ¶¶ 54-55, 66-67. Highmark therefore did not learn that Defendants had submitted the Sham Letter and other challenged materials until after the proceedings, when certain IDR entities provided copies of the IDR packages at Highmark's request. *Id.* ¶ 67. Those IDR entities did so as a courtesy; Highmark had no access to Defendants' submissions while the IDRs were pending and no automatic right under the NSA to obtain them afterward.

France strongly supports the sufficiency of Highmark's non-discoverability allegations. The Third Circuit rejected the argument that reasonable diligence required the movant to independently investigate the truth of its adversary's representations, holding that "[r]easonable diligence does not require parties to assume the other side is lying." 43 F.4th at 380. A "reasonably diligent litigant," the court explained, was "entitled to rely upon [the opposing party's]

representations without launching a separate fact-checking investigation." *Id.* at 379. If reasonable diligence did not require the movant in *France* to investigate representations it could see, it cannot require Highmark to discover fabricated evidence in submissions it could not see.

Bromedicon argues that Highmark knew the "real" facts concerning its own negotiations. Bromedicon Br. at 16. But knowing what occurred in Highmark's negotiations is not the same as knowing what Defendants told the IDR entities about those negotiations. Nor would that knowledge have alerted Highmark that Defendants had submitted a letter that, according to the Complaint, had never been sent to Highmark and falsely suggested that Bromedicon had engaged in good-faith contract negotiations while Highmark failed to reciprocate. Compl. ¶¶ 66-68. Highmark alleges that it did not learn of the Sham Letter or its submission to the IDR entities until after the determinations issued. *Id.* ¶ 67. Nothing in *France* required Highmark to anticipate that Defendants would present a different account of those negotiations in submissions Highmark could not see.

The cooling-off allegations were not concealed in Defendants' submissions in the same way, but the Complaint plausibly alleges that they could not reasonably have been identified within the time available to object. HaloMD was filing an average of 1,262 disputes per day nationally, while Highmark itself received hundreds of disputes each day from numerous providers. Compl. ¶¶ 42, 46-48, 53-55, 92. Identifying a cooling-off violation required comparing each new dispute against prior determinations involving the same service, provider, and payor to determine whether the new dispute fell within the 90-day cooling-off period. *Id.* ¶ 48. The Complaint alleges that, given the volume of disputes and the short objection period, Highmark did not (because it could not) identify the pattern until it conducted a post-proceeding analysis.

Bromedicon and HaloMD respond that Highmark had a mechanism for raising eligibility objections during the IDR process. Bromedicon Br. at 14; HaloMD Br. at 15. But the existence of an objection mechanism does not establish that Highmark could reasonably have identified the alleged violations in time to use it. The Departments'[1] June 2025 Technical Assistance expressly addresses jurisdictional and procedural errors that are not identified until after an IDR dispute has closed and provides a process for reopening closed disputes to correct such errors. *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 whether Defendants committed fraud or alter the FAA's reasonable-diligence standard. But it confirms that the IDR framework contemplates that certain eligibility-related errors may not be identified until after a dispute has closed. Highmark's allegations therefore cannot be rejected merely because an objection procedure existed. Bromedicon also points to Highmark's processing of 229 million claims in 2024. Bromedicon Br. at 13. But processing claims and identifying cooling-off violations are different tasks. The latter required Highmark to compare successive IDR disputes involving the same parties and services against prior determinations and do so within the period for raising an eligibility objection. The fact that Highmark ultimately reconstructed the violations from information in its records does not establish that it reasonably could have identified them as the disputes were filed. *France* requires reasonable diligence, not contemporaneous detection of a pattern that became apparent only after reviewing information across multiple proceedings.

[1] 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.

iii. The Complaint Plausibly Alleges That the Fraud Was Material

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

The determination letters themselves provide the required nexus for the Sham Letter. In DISP-1851702 and DISP-3528869, the IDR entity found "the initiating party's evidence regarding the provider's good faith contract negotiations and the provider's extensive experience" to be "the most persuasive." Compl. ¶ 68(a). In DISP-3060503, the IDR entity described the Sham Letter as "compelling in substantiating that [Bromedicon]'s offer best reflects the appropriate payment amount." *Id.* ¶ 68(b). The Complaint thus alleges not merely that the IDR entities received the challenged evidence, but that they expressly relied on it in selecting Defendants' offers.

The connection is equally direct for the cooling-off violations. Highmark alleges that Defendants falsely attested that disputes were eligible for IDR when the cooling-off period barred those disputes from being initiated at that time. *Id.* ¶¶ 39-48. Had Defendants accurately disclosed that the disputes fell within the cooling-off period, Highmark alleges, the disputes could not have proceeded to a payment determination until the statutory period expired. The alleged misrepresentations therefore bear directly on the IDR determinations that followed.

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 the required nexus lacking because the IDR entity's decision did not indicate that the allegedly false QPA information "overrode" the other evidence it considered. *Id.* at 1123. Highmark alleges the opposite here: the IDR entities expressly identified the challenged negotiation evidence as "the most persuasive" and the Sham Letter itself as "compelling." Compl. ¶ 68(a)-(b). Bromedicon's and HaloMD's false

eligibility attestations likewise supplied the threshold factual premise that allowed the cooling-off disputes to proceed to payment determinations. Those allegations are enough to plead the nexus *France* requires.

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

Bromedicon's and HaloMD's authorities confirm, rather than defeat, Highmark's claim under § 10(a)(1). Those cases recognize that § 10(a)(1) permits vacatur for fraud affecting an IDR award, but the claims before them failed on grounds absent here: the insurers either pursued different claims or already knew of the alleged fraud and had an opportunity to present it during IDR. Highmark alleges here what was missing in those cases—fabricated evidence concealed in blind submissions that Highmark could not see or challenge during IDR, along with the IDR entities' own statements showing that the concealed evidence mattered to their decisions. Defendants' cases thus identify the circumstances supporting vacatur under § 10(a)(1), and Highmark alleges those circumstances here.

In *Blue Cross Blue Shield of Texas v. HaloMD, LLC*, the insurer did not seek vacatur under § 10(a)(1). It instead pursued RICO and state-law claims to recover losses tied to thousands of IDR awards. The court rejected those claims as collateral attacks because the insurer had an opportunity to challenge eligibility during IDR and its theories would have required the court to revisit those eligibility determinations and the resulting awards. 2026 U.S. Dist. LEXIS 124293, at *7, *11-17 (E.D. Tex. May 22, 2026). In doing so, however, the court recognized that the NSA permits judicial review under the specific provisions incorporated from the FAA and that an IDR determination is binding only "in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the" IDR entity. *Id.* at *10. Highmark's Count I does not present the claim the court

rejected in *BCBS Texas*. It expressly seeks vacatur under § 10(a)(1) based on fraud that Highmark alleges it had no opportunity to discover or challenge during IDR.

UnitedHealthcare of Pennsylvania, Inc. v. NorthStar Anesthesia of Pennsylvania, LLC, No. 2:25-cv-7187, 2026 U.S. Dist. LEXIS 93303 (E.D. Pa. Apr. 28, 2026), does not undermine Highmark's § 10(a)(1) claim. Although UnitedHealthcare did not seek vacatur, the court expressly recognized that § 10(a)(1) permits vacatur of an award "procured by corruption, fraud, or undue means." *Id.* at *19-20. Highmark invokes that statutory basis for relief in Count I. And the alleged fraud here is materially different from the fraud alleged in *NorthStar*. There, UnitedHealthcare "immediately objected" to the disputed eligibility issue and submitted documentation supporting its position during IDR. *Id.* at *8. Here, Highmark alleges that the Sham Letter was concealed from it throughout the IDR proceedings and discovered only afterward. *NorthStar* therefore did not address the claim presented here: a § 10(a)(1) claim based on fraudulent evidence that the insurer had no opportunity to see or challenge during IDR.

Anthem Blue Cross Life & Health Insurance Co. v. HaloMD LLC, No. 8:25-cv-01467, 2026 U.S. Dist. LEXIS 79243 (C.D. Cal. Apr. 9, 2026), addresses that distinction directly. The court explained that § 10(a)(1) requires fraud that "was not discoverable upon the exercise of due diligence prior to or during the arbitration" and was "materially related to an issue in the arbitration." *Id.* at *18. Where the alleged fraud is actually "discovered and brought to the attention of the arbitrators," the court explained, a disappointed party does not get a "second bite at the apple." *Id.* at *18-23. That was the problem in *Anthem*. The insurer had "objected to eligibility for all the sample determinations identified in the FAC," and thus had "pleaded itself out of court" because the "'fraud' was known during the IDR and disclosed" to the IDR entity. *Id.* at *21-23. Indeed, the court emphasized that Anthem could not identify "even one example" of an IDR

determination involving false information based on facts it "did not know, and could not reasonably have known, before or during the IDR process." *Id.* at *23.

Highmark identifies the very kind of example *Anthem* found missing. The Sham Letter was contained in submissions Highmark could not see, had never been sent to Highmark, and was discovered only after the IDR proceedings were over. Compl. ¶¶ 60-68. Highmark therefore is not seeking a "second bite at the apple" on an issue it presented to the IDR entity and lost. It alleges that Defendants' concealment deprived Highmark of any opportunity to challenge the Sham Letter in the first place. And because Highmark did not know that Defendants had submitted the Sham Letter or the false negotiation narrative it supported, Highmark could not present the authentic communications that expose the letter as fabricated.

BCBS Healthcare Plan of Georgia, Inc. v. HaloMD, Inc., No. 1:25-cv-2919-TWT, 2026 U.S. Dist. LEXIS 174770 (N.D. Ga. July 10, 2026), reinforces the other critical distinction: a plaintiff must allege how the fraud affected the IDR proceeding. The court explained that Rule 9(b) requires a complaint to identify the challenged statements or omissions, their content, and "the manner in which they misled" the IDR entity. *Id.* at *64 (citation omitted). The allegations there fell short because BCBS Georgia did not adequately identify what erroneous information had been presented or explain "how the representations misled" the IDR entity. *Id.* at *67-70. And, as in *Anthem*, BCBS Georgia already "had the opportunity to object and make its case"; the IDR entities heard its objections and nevertheless ruled against it. *Id.* at *68, *76-77.

Highmark pleads what was missing there. The Complaint identifies the Sham Letter, the proceedings in which Defendants allegedly used it, why it was fabricated, and the false narrative of Bromedicon's good-faith negotiations it was used to support. Compl. ¶¶ 60-68. It also alleges how that evidence mattered to the IDR entities. The IDR entities described Defendants' evidence

of "good faith contract negotiations" as "the most persuasive" evidence and, in at least one determination, described the Sham Letter itself as "compelling." *Id.* ¶ 68(a)-(b). Those are not allegations that leave the Court to guess how the alleged fraud affected the proceedings; they are the decisionmakers' own descriptions of the significance they assigned to the challenged evidence.

The same distinction applies to Highmark's cooling-off allegations. Highmark alleges that it did not identify those violations during IDR because the volume and timing of Defendants' filings prevented it from detecting the pattern within the short period available for eligibility objections. *Id.* ¶¶ 42, 46-48, 53-55, 92. That is materially different from *Anthem* and *BCBS Georgia*, where the insurers possessed the relevant information, raised their objections during IDR, and then sought relief after the IDR entities rejected those objections.

Taken together, Defendants' cases reinforce the sufficiency of Highmark's § 10(a)(1) claim. *BCBS Texas* and *NorthStar* recognize § 10(a)(1) vacatur as an available remedy for fraud affecting an IDR award—a remedy Highmark expressly invokes in Count I. *Anthem* requires fraud that could not reasonably have been discovered during IDR; Highmark alleges a fabricated document concealed in a submission it could not see. And *BCBS Georgia* requires allegations explaining how the fraud misled the IDR entity; Highmark points to the IDR entities' own descriptions of the challenged evidence as "the most persuasive" and "compelling." Defendants' cases therefore do not establish a defect in Highmark's § 10(a)(1) claim. They identify the allegations necessary to support it, and Highmark pleads them.

2. Highmark Plausibly Alleges That the IDR Entities 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) (denying vacatur where the arbitrator performed the task the parties had authorized, even if its interpretation may have been erroneous; distinguishing questions concerning whether the arbitrator had authority to decide the dispute at all).

Highmark alleges that the IDR entities lacked authority to make payment determinations in the challenged disputes because the NSA prohibited those disputes from being initiated. Under the statute, after a payment determination is made, the initiating party may not initiate another IDR proceeding during the ensuing 90-day period "involving the same other party ... with respect to such a same item or service." 42 U.S.C. § 300gg-111(c)(5)(E)(ii). The Complaint identifies numerous disputes that Defendants initiated during that period. Compl. ¶¶ 39-48 & Ex. B.

Klay v. United Healthgroup, Inc., 376 F.3d 1092 (11th Cir. 2004), supports Highmark's theory. There, the Eleventh Circuit explained that an arbitrator necessarily exceeds its powers by deciding a dispute that is not subject to arbitration. As the court put it, "[i]f a dispute is nonarbitrable, then an arbitrator necessarily exceeds his powers in adjudicating it." *Id.* at 1112 n.20. Here, Highmark alleges that the cooling-off provision similarly barred the identified later initiations from proceeding through IDR during the statutory period. Compl. ¶¶ 39-48. If so, the IDR entities exceeded their authority by making payment determinations in those disputes.

Oxford Health does not hold otherwise. The parties there agreed that the arbitrator should interpret their contract to determine whether it authorized class arbitration. 569 U.S. at 567-68. Because the arbitrator performed that assigned task, the Supreme Court held that § 10(a)(4) did not permit a court to vacate the award simply because the arbitrator may have interpreted the contract incorrectly. *Id.* at 568-72. Highmark's claim is different. It does not allege that the IDR entities simply made an error while deciding disputes properly before them. It alleges that the

cooling-off provision barred Defendants from initiating the disputes in the first place and that the IDR entities therefore lacked statutory authority to make payment determinations in those disputes.

Bromedicon and HaloMD respond that the IDR entities have authority to determine eligibility. Bromedicon Br. at 17; HaloMD Br. at 18. But that misses the point. Highmark does not argue that every eligibility mistake means an IDR entity exceeded its powers. The issue is narrower: whether an IDR entity can issue a payment award in a dispute that, as alleged here, the NSA prohibited Bromedicon and HaloMD from initiating during the 90-day cooling-off period.

i. The IDR Entities' Role in Determining Eligibility Does Not Foreclose Highmark's Claim

Bromedicon and HaloMD argue that the IDR entities could not have exceeded their powers because IDR entities themselves decide whether a dispute is eligible for IDR. But that does not answer the question presented here: whether an IDR entity exceeds its powers when it issues a payment determination in a dispute that, as alleged, the statute prohibited from proceeding through IDR.

The Departments' recent Final Rule confirms that distinction. Although IDR entities make eligibility determinations in the first instance, the Departments explained that those entities are "statutorily prohibited from making payment determinations for items and services that are not subject to the [NSA]" and therefore "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 also expressly subjected NSA payment determinations to judicial review under the grounds set forth in § 10(a), including § 10(a)(4). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Highmark's claim therefore does not ask the Court to second-guess how an IDR entity exercised discretion entrusted to it. Highmark alleges that an objective statutory restriction made

the challenged disputes ineligible for IDR and that the IDR entities nevertheless made payment determinations in them. At the pleading stage, those allegations plausibly establish that the IDR entities acted beyond the authority the statute gave them.

ii. Bromedicon's and HaloMD's "Same Other Party" Argument Does Not Warrant Dismissal

Bromedicon and HaloMD separately argue 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." Bromedicon Br. at 13; HaloMD Br. at 5. That argument raises a fact-specific issue, but it does not justify dismissal of Highmark's cooling-off theory as a whole.

The NSA prohibits an initiating party from initiating another IDR proceeding during the 90-day cooling-off period "involving the same other party" and the same item or service. 42 U.S.C. § 300gg-111(c)(5)(E)(ii); *see also* 45 C.F.R. § 149.510(c)(4)(vi)(B). Neither the statute nor the regulation defines "same other party." But 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. ¶¶ 40-43. That language supports Highmark's allegation that Highmark was treated as the opposing party in those proceedings. And the fact that Highmark may act as an administrator for some plans does not establish that different parties were involved in the challenged disputes. That depends on the particular plan and Highmark's role in each proceeding.

Defendants' agency guidance does not resolve the issue. The cited materials explain that a third-party administrator or vendor representing a group health plan is not itself the "initiating party," and, in the batching context, that claims involving different self-funded plans are treated separately even when the same third-party administrator administers those plans. *See HHS et al.,*

Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities 2-3 (Aug. 2022); *Partial Report on the Independent Dispute Resolution Process, Oct. 1-Dec. 31, 2022*, at 8 n.22. Those materials show that plan identity matters in some IDR contexts. But they do not define "same other party" for purposes of the cooling-off provision or establish that the challenged disputes here involved different plans.

The June 2026 Final Rule does not adopt Defendants' broader interpretation either. Although the Departments addressed the distinction between self-insured group health plans and third-party administrators in certain batching provisions, they did not define "same other party" in the cooling-off provision or address whether that phrase refers to the underlying plan when a third-party administrator participates in the IDR proceeding. *See generally* 91 Fed. Reg. 33,900 (June 4, 2026). The cooling-off provisions therefore remain a text-based, claim-specific inquiry. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392-93 (2024) (holding that courts must use independent judgment to interpret legal text rather than deferring to agency interpretations).

Defendants' argument also cannot support dismissal across the board unless Highmark acted as a third-party administrator for different underlying plans in the challenged disputes. The Complaint does not allege that. It alleges that Highmark has both fully insured and self-funded business and that, for its fully insured business, Highmark is itself the responsible payor. Compl. ¶ 18. Highmark does not contend that a shared third-party administrator, standing alone, makes different self-funded plans the same "other party." Rather, plan identity may affect particular administrative-services-only ("ASO") disputes, while fully insured matters involve Highmark as the responsible issuer. Because Defendants do not identify which challenged determinations involved different underlying self-funded plans, much less establish that all of them did, their third-party-administrator theory cannot support dismissal of the entire § 10(a)(4) claim as pleaded.

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

BCBS Georgia reached a contrary conclusion under § 10(a)(4), but its reasoning should not be followed here. The court reasoned that because federal regulations authorize IDR entities to determine eligibility, an IDR entity does not exceed its powers by issuing a payment determination after finding a dispute eligible, even if that eligibility determination was wrong. 2026 U.S. Dist. LEXIS 174770, at *73-74. In the court's view, the IDR entities had "performed the task" assigned to them by reviewing the parties' submissions, deciding eligibility, and issuing payment determinations. *Id.* at *75.

That reasoning gives dispositive effect to an IDR entity's own eligibility determination without accounting for the statutory limits on its authority to issue a payment determination. Congress authorized IDR entities to make payment determinations "with respect to a determination for a qualified IDR item or service." 42 U.S.C. § 300gg-111(c)(5)(A). And the Departments have since stated that IDR entities are "statutorily prohibited" from issuing payment determinations for items and services that are not subject to the NSA. 91 Fed. Reg. 33,900, 33,933 (June 4, 2026). The fact that an IDR entity determines eligibility in the first instance does not eliminate those statutory limits or insulate its determination of its own authority from review under § 10(a)(4).

Highmark alleges that the cooling-off provision made the identified later initiations ineligible at the time they were made and that the IDR entities nevertheless issued payment determinations in those disputes. Treating the IDR entities' initial eligibility determinations as conclusive would effectively foreclose § 10(a)(4) review whenever an IDR entity first determined that a dispute was eligible—the very question Highmark contends the IDR entity lacked authority to answer incorrectly and then proceed to payment. Although the NSA allows the dispute to be submitted after the 90-day cooling-off period expires, that later opportunity neither authorizes a premature filing nor excuses an allegedly false attestation that the dispute was eligible when

submitted. And it surely does not authorize a payment determination on a dispute initiated before that period ended. Nothing in the NSA requires that result, particularly where Congress expressly incorporated § 10(a)(4) as a ground for judicial review. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Reach Air does not require a different result. There, the Eleventh Circuit rejected a § 10(a)(4) challenge concerning the IDR entity's treatment of the QPA and other information bearing on the amount of payment. 160 F.4th at 1119-21. The IDR entity was performing the task assigned to it—selecting between the parties' payment offers—and the challenge concerned how it performed that task. *Id.* Highmark's cooling-off claim concerns whether the challenged disputes could proceed to a payment determination at all. Highmark does not allege that the IDR entities made the wrong decision on an issue within their authority; it alleges that the statute prohibited them from issuing payment determinations in the identified disputes.

iv. Highmark Has Standing to Challenge the Determinations

Bromedicon's standing challenge fares no better. Bromedicon Br. at 12. Highmark alleges that it acts both as an insurer for fully insured plans and as a third-party administrator for self-funded plans and that it was identified as the non-initiating party in the challenged IDR proceedings. Compl. ¶¶ 18, 40-43. As to fully insured matters, Highmark alleges that it bears the payment obligations resulting from the determinations. *Id.* ¶ 18. As to self-funded matters, Highmark acts as the third-party administrator and alleges injuries and obligations of its own, including obligations to pursue recovery of overpayments to providers. *Id.* It also alleges that Defendants' conduct caused Highmark to incur non-refundable administrative and IDR entity fees, divert internal resources to investigating and responding to the alleged scheme, and suffer harm to its relationships with self-funded customers. *Id.* ¶¶ 78-80, 94(b)-(c). Those allegations support Highmark's standing to pursue its own claims even where a plan sponsor ultimately funded a particular payment. To the extent Highmark seeks recovery of a payment made by a self-funded

plan, the identity of the responsible plan and Highmark's authority to recover that payment may bear on that particular relief. But that issue concerns the scope of relief; it does not eliminate Highmark's standing to pursue its own injuries or require dismissal of the action as a whole.

* * *

Count I seeks vacatur on two grounds expressly incorporated into the NSA. Under § 10(a)(1), Highmark alleges that Defendants procured payment determinations through fabricated or materially false evidence that Highmark could not discover during the blind IDR process. Under § 10(a)(4), Highmark alleges that the IDR entities issued payment determinations in disputes that the statutory cooling-off period prohibited from proceeding through IDR. Neither claim asks the Court to revisit an IDR entity's judgment about the appropriate payment amount. And none of the cases Defendants cite requires dismissal of either claim. The Complaint therefore plausibly states a claim for vacatur under Count I.

B. THE COMPLAINT SATISFIES RULE 9(b)

Highmark pleads the alleged fraud with the particularity Rule 9(b) requires. The Complaint provides the "who, what, when, where, and how" of the alleged fraud and gives Defendants notice of the "precise misconduct" charged. *Bookwalter*, 946 F.3d at 176; *see also* Section II above.

1. The Complaint Identifies the Alleged Fraud with Particularity

The Complaint identifies the parties involved in the alleged fraud, the representations Highmark alleges were false, when and where those representations were made, and how Defendants allegedly used them to obtain IDR determinations. It alleges that HaloMD and Bromedicon submitted a sham negotiation letter, made false representations about Highmark's negotiation efforts, submitted false eligibility attestations, and presented misleading QPA information in federal IDR proceedings. Compl. ¶¶ 39-76 & Exs. B-C, Dkt. Nos. 1-2, 1-3. It identifies specific proceedings and dates, explains why the Sham Letter was false, and identifies

procedure codes, determination dates, and successive filings supporting the cooling-off allegations. *Id.* ¶¶ 40-48, 60-68. The Complaint thus identifies the challenged representations, the proceedings in which they were made, and the factual basis for alleging that they were false.

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

Bromedicon and HaloMD demand more detail than Rule 9(b) requires. The Third Circuit held in *Bookwalter* that Rule 9(b) does not require a plaintiff to plead "the date, time, place, or content of every single allegedly false" claim. 946 F.3d at 176. Where the alleged falsity arises from a broader course of conduct, it is enough to plead the circumstances giving rise to that falsity with particularity. *Id.* Similarly, *Foglia v. Renal Ventures Management, LLC*, 754 F.3d 153, 156–58 (3d Cir. 2014), rejected a rule requiring representative samples of every fraudulent claim and held that allegations describing the details of the fraudulent scheme, together with "reliable indicia" supporting an inference that false claims were submitted, satisfied Rule 9(b). *See also Aetna Inc. v. Mednax, Inc.*, No. CV 18-2217, 2018 WL 5264310, at *7-8 (E.D. Pa. Oct. 23, 2018) (extending *Foglia* to non-FCA healthcare fraud claims).

Highmark has pleaded considerably more than a generalized fraudulent scheme. Exhibits B and C identify the challenged proceedings, and the Complaint provides specific examples showing how the alleged misconduct occurred. Compl. ¶¶ 39-76 & Exs. B-C. Rule 9(b) does not require Highmark to repeat the same transaction-level allegations for every proceeding identified in those exhibits.

3. The Complaint Adequately Identifies Each Defendant's Role

The Complaint also distinguishes the roles of HaloMD and Bromedicon. Highmark alleges that HaloMD prepared and prosecuted IDR disputes for Bromedicon, while Bromedicon was the provider on whose behalf the submissions were made, whose negotiations were allegedly

misrepresented, and who received the resulting awards. Compl. ¶¶ 9-11, 20-28, 39-76, 110. Those allegations give each Defendant notice of the conduct attributed to it. And although Rule 9(b) requires the circumstances of the alleged fraud to be pleaded with particularity, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b); *see Foglia*, 754 F.3d at 155-56.

C. THIS COURT HAS PERSONAL JURISDICTION OVER HALOMD

HaloMD directed substantial conduct toward Pennsylvania in connection with the IDR proceedings and payment determinations at issue here. The Complaint identifies hundreds of disputes that HaloMD initiated on behalf of Pennsylvania-based Bromedicon seeking payment from Highmark. Publicly available judicial records further establish that HaloMD has separately prosecuted IDR disputes on behalf of another Pennsylvania provider, arising from services rendered at a Pennsylvania hospital, against another Pennsylvania insurer. And HaloMD does so as part of an interconnected, family-controlled healthcare enterprise with substantial operations in Pennsylvania, including through Bromedicon and its Pennsylvania-based parent, Medsurant Health. These Pennsylvania contacts reflect HaloMD's deliberate conduct of its core IDR business in the Commonwealth. Highmark's claims arise directly from that same Pennsylvania-directed conduct. Specific jurisdiction therefore exists under traditional minimum contacts principles. The same conclusion is independently supported by the *Calder* effects test and HaloMD's alleged participation in a conspiracy with Pennsylvania-based Bromedicon.

1. HaloMD Has Sufficient Minimum Contacts with Pennsylvania, and Highmark's Claims Arise Directly from Those Contacts

Specific jurisdiction requires that the defendant have deliberately created contacts with the forum through its own purposeful conduct and that the plaintiff's claims "arise out of or relate to" those contacts. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359-60 (2021);

O'Connor v. Sandy Lane Hotel Co., 496 F.3d 312, 317 (3d Cir. 2007). Where those requirements are satisfied, the exercise of jurisdiction must also comport with "fair play and substantial justice." *O'Connor*, 496 F.3d at 317. Each requirement is satisfied here.

Purposeful direction. HaloMD has deliberately directed the IDR activity at issue here toward Pennsylvania. HaloMD administers and prosecutes IDR disputes for Bromedicon, a healthcare provider headquartered in West Conshohocken, Pennsylvania. Compl. ¶¶ 9-10, 29-38. Acting on Bromedicon's behalf, HaloMD initiated and prosecuted hundreds of IDR disputes seeking payment from Highmark, a Pennsylvania-headquartered payor. *Id.* ¶¶ 8, 29-38, 45-47, 91. Those contacts were neither "random" nor "fortuitous." *Ford*, 592 U.S. at 359. HaloMD knowingly entered a commercial relationship with a Pennsylvania provider and repeatedly performed its core business for that provider by pursuing reimbursement claims against a Pennsylvania payor.

HaloMD's Pennsylvania conduct and contacts go beyond its relationship with Bromedicon. Publicly available judicial records show that HaloMD has performed the same IDR services for other Pennsylvania healthcare providers seeking reimbursement from other Pennsylvania insurers. In *UnitedHealthcare of Pennsylvania, Inc. v. NorthStar Anesthesia of Pennsylvania, LLC*, No. 2:25-cv-07187-MAK (E.D. Pa.), NorthStar Anesthesia of Pennsylvania provided anesthesia services to a patient at St. Mary Medical Center in Langhorne, Pennsylvania and, "through HaloMD," pursued the federal IDR process against UnitedHealthcare of Pennsylvania. *See NorthStar*, 2026 U.S. Dist. LEXIS 93303, at *8 & n.20. The amount sought through the IDR process allegedly included an additional amount attributable to HaloMD's contingency fee. *Id.* HaloMD thus undertook the same type of IDR work for another Pennsylvania provider, arising

from medical services rendered at a Pennsylvania hospital and seeking payment from another Pennsylvania insurer.

These contacts arise from HaloMD's own choices, not simply from the fact that Highmark and Bromedicon happen to be located in Pennsylvania. HaloMD chose to provide IDR services to Pennsylvania healthcare providers and, in doing so, repeatedly pursued reimbursement from Pennsylvania payors. That is different from a defendant whose only connection to the forum is its relationship with a person who resides there. *Cf. Walden v. Fiore*, 571 U.S. 277, 285-86 (2014) (distinguishing contacts with the forum itself from a defendant's relationship with a forum resident "standing alone"). And HaloMD need not have been physically present in Pennsylvania to have purposefully directed conduct toward the forum. *See O'Connor*, 496 F.3d at 317-18 (explaining that physical presence is unnecessary and that purposeful availment turns on "deliberate targeting of the forum"). HaloMD's repeated Pennsylvania-directed IDR activity satisfies that standard.

Relatedness. Highmark's claims arise directly from those Pennsylvania-directed activities. Every claim against HaloMD is premised on IDR disputes HaloMD initiated and prosecuted for Bromedicon, a Pennsylvania provider, seeking payment from Highmark. Highmark alleges that, in prosecuting those disputes, HaloMD submitted false eligibility attestations, manipulated IDR submissions, and made misrepresentations that procured inflated IDR awards and caused Highmark to make payments it otherwise would not have made. Compl. ¶¶ 29-52, 77-91. The connection between HaloMD's forum contacts and Highmark's claims therefore exceeds what due process requires: the Pennsylvania-directed business activities giving rise to HaloMD's forum contacts are the same activities in which the alleged misconduct occurred. *See Ford*, 592 U.S. at 362 (the "arise out of or relate to" requirement does not demand strict causal proof); *O'Connor*,

496 F.3d at 318-23 (requiring a sufficiently close relationship between the defendant's forum contacts and the claims).

Fair play and substantial justice. Exercising jurisdiction over HaloMD in Pennsylvania is reasonable given its purposeful and repeated IDR work for Pennsylvania providers in disputes seeking payment from Pennsylvania insurers; once purposeful contacts and relatedness are established, jurisdiction is presumptively constitutional. *O'Connor*, 496 F.3d at 324 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). Pennsylvania also has a strong interest in adjudicating claims by a Pennsylvania insurer arising from that Pennsylvania-directed conduct, and HaloMD cannot show that litigating here would be unreasonable.

HaloMD's out-of-circuit authorities do not compel a different result. In *BCBS Georgia*, the court considered whether HaloMD "transact[ed] any business within" Georgia under Georgia's long-arm statute, which, unlike Pennsylvania's, does not automatically extend to the limits of federal due process. 2026 U.S. Dist. LEXIS 174770, at *51, *57-58. The court found no allegation that HaloMD purposefully initiated business in Georgia and rejected the proposition that HaloMD's nationwide solicitation of physician practices, standing alone, established that it transacted business there. *Id.* at *54-55. The record here is materially different. HaloMD has prosecuted hundreds of IDR disputes for a Pennsylvania provider (Bromedicon) seeking payment from a Pennsylvania insurer (Highmark). And *NorthStar* confirms that HaloMD's relationship with Bromedicon is not an isolated encounter with Pennsylvania: HaloMD performs the same IDR business for other Pennsylvania providers and against other Pennsylvania insurers.

Elite Neurophysiology LLC v. Blue Cross Blue Shield of Illinois, No. 25-cv-1735, 2025 WL 2388404 (D.N.J. Aug. 18, 2025), is likewise inapposite. There, a New Jersey provider sued an Illinois insurer to confirm an IDR award, and the insurer's connection to New Jersey resulted

from its beneficiary's unilateral decision to seek treatment there. Here, the directionality of the conduct is reversed. HaloMD itself chose to undertake and repeatedly perform IDR services for a Pennsylvania provider, and Highmark's claims arise from HaloMD's own conduct in performing those services.

2. HaloMD's Pennsylvania Contacts Were Deliberate, Not Fortuitous

HaloMD's Pennsylvania contacts are not the product of happenstance. HaloMD operates within an interconnected healthcare enterprise whose owners and senior management have substantial ties to the Pennsylvania provider on whose behalf HaloMD prosecuted the challenged disputes. HaloMD's members are entities owned by Scott and Alla LaRoque. Alla LaRoque is HaloMD's founder and president and sits on MPOWERHealth's board; Scott LaRoque is MPOWERHealth's founder and CEO. Compl. ¶ 10 nn.3-4. MPOWERHealth owns, controls, or is affiliated with Bromedicon, a Pennsylvania-based provider. *Id.* ¶¶ 9, 106. In 2025, MPOWERHealth acquired Medsurant Health, headquartered in West Conshohocken, whose network includes Pennsylvania neuromonitoring practices. *Id.* ¶¶ 9-10 nn.2-3. And HaloMD used the email address medsurantarbitrationnsa@halomd.com in the challenged proceedings, further connecting its work for Bromedicon to Medsurant. *Id.* ¶ 43(a)-(h).

These relationships are not offered as an independent basis for jurisdiction or as a means of attributing another entity's forum contacts to HaloMD. They are relevant because they provide context for HaloMD's own contacts with Pennsylvania and show that those contacts were deliberate rather than "random," "fortuitous," or "attenuated." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). HaloMD did not happen upon an out-of-state client that happened to have some connection to Pennsylvania. It knowingly undertook IDR work for a Pennsylvania provider controlled or affiliated with an enterprise governed by the same individuals who own and manage HaloMD, and then repeatedly pursued reimbursement from a Pennsylvania payor on that

provider's behalf. *See id.* at 475-76 (explaining that jurisdiction turns on contacts resulting from the defendant's own actions that create a substantial connection with the forum).

3. The *Calder* Effects Test Independently Supports Jurisdiction

Pennsylvania's long-arm statute permits personal jurisdiction over nonresident defendants "to the fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. § 5322(b); *Lombardi*, 2020 U.S. Dist. LEXIS 45728, at *9-10.

The *Calder* effects test requires that "(1) defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm in the forum; and (3) the defendant expressly aimed his tortious conduct at the forum." *Colur World, LLC v. Supmedic, Inc.*, 801 F. Supp. 3d 524, 530 (E.D. Pa. 2025) (citations omitted) (noting that the effects test is "distilled from" *Calder v. Jones*, 465 U.S. 783 (1984)). All three requirements are met: Highmark alleges intentional torts (fraud, intentional misrepresentation, and civil conspiracy); Highmark is headquartered in Pennsylvania and suffered the resulting financial injury here, Compl. ¶¶ 77-80; and HaloMD expressly aimed the challenged conduct at Pennsylvania by prosecuting hundreds of IDR disputes for a Pennsylvania provider seeking payment from a Pennsylvania payor, knowing that the intended consequence was to cause Highmark to make payments to its Pennsylvania provider client. *Id.* ¶¶ 8, 29-52, 77-91.

4. HaloMD Is Subject to Jurisdiction as Bromedicon's Co-Conspirator

Courts within the Third Circuit have recognized co-conspirator jurisdiction where substantial acts in furtherance of the conspiracy occurred in the forum and the foreign defendant knew or should have known of those acts. *United Healthcare Servs. v. Cephalon, Inc.*, No. 17-555, 2018 U.S. Dist. LEXIS 23720, at *10 (E.D. Pa. Feb. 13, 2018); *see also Arrington v. ColorTyme, Inc.*, 972 F. Supp. 2d 733, 745-46 (W.D. Pa. 2013).

Those requirements are satisfied here. Bromedicon maintains its principal place of business in West Conshohocken and regularly transacts business in Pennsylvania. Compl. ¶ 9. Highmark

alleges that Bromedicon participated in the scheme by coordinating with HaloMD in prosecuting the challenged disputes and receiving payments resulting from the allegedly fraudulently procured IDR determinations. *Id.* ¶¶ 43, 70, 73, 90, 105-06. As discussed above, those disputes arose from Bromedicon's Pennsylvania healthcare operations and sought payment from a Pennsylvania payor. *See* Section III.C.1 above.

The Complaint also supports the inference that HaloMD knew of Bromedicon's acts in furtherance of the alleged conspiracy. HaloMD and Bromedicon allegedly coordinated in prosecuting the challenged disputes, and their ownership and management substantially overlap. Scott LaRoque is an owner of HaloMD and the founder and CEO of MPOWERHealth, which owns, controls, or is affiliated with Bromedicon. Alla LaRoque is HaloMD's founder and president, formerly served as MPOWERHealth's COO, and currently sits on its board. *Id.* ¶¶ 9-10 & nn.3-4. Those relationships, together with HaloMD's alleged role in prosecuting the disputes on Bromedicon's behalf, support the inference that HaloMD knew of Bromedicon's conduct in furtherance of the alleged scheme. Accordingly, to the extent the Court applies the co-conspirator theory recognized by district courts within this Circuit, Bromedicon's substantial Pennsylvania acts in furtherance of the alleged conspiracy provide an additional basis for exercising jurisdiction over HaloMD.[2]

[2] Even if the Court were to conclude Highmark has not yet made a prima facie showing—though Highmark respectfully submits it has—dismissal would be premature. Under *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003), a plaintiff's "right to conduct jurisdictional discovery should be sustained" unless the claim is "clearly frivolous." *See also Shuker v. Smith & Nephew, PLC*, 885 F.3d 760 (3d Cir. 2018) (reversing dismissal and holding plaintiffs entitled to jurisdictional discovery on alter ego theory). Highmark requests, at a minimum, limited discovery into HaloMD's IDR disputes involving Pennsylvania providers and payors, its business relationships with Pennsylvania providers including Bromedicon and NorthStar, the operational relationships among HaloMD, MPOWERHealth, Medsurant Health, and their Pennsylvania affiliates, and Scott and Alla LaRoque's involvement in HaloMD's Pennsylvania-directed activities.

D. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER HIGHMARK'S NON-VACATUR CLAIMS (COUNTS II-VI)

Bromedicon and HaloMD move to dismiss Counts II-VI under Rule 12(b)(1), contending that the NSA strips this Court of subject-matter jurisdiction over Highmark's fraud and misrepresentation claims. But the NSA nowhere states that federal courts lack jurisdiction over independent claims arising from fraudulent conduct associated with the IDR process. Instead, the provision Defendants invoke limits judicial review of an IDR entity's *determination* and expressly recognizes fraud and misrepresentation as exceptions to the binding effect of such a determination. In all events, Highmark's non-vacatur claims do not ask the Court to reconsider the payment amounts selected by IDR entities; they challenge Defendants' independent tortious conduct and seek relief for independent injuries that vacatur cannot remedy.

1. The NSA's Limitation on Judicial Review of IDR Determinations Does Not Strip Jurisdiction Over Independent Claims

The jurisdictional argument Bromedicon and HaloMD advance begins from the wrong premise. The NSA does not broadly prohibit judicial scrutiny of any conduct occurring in or around the IDR process. It specifically addresses judicial review of "a determination of [an IDR entity] under subparagraph (A)." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Subparagraph (A), in turn, governs the IDR entity's selection of the payment amount for a qualified IDR item or service. *Id.* § 300gg-111(c)(5)(A)(i). Thus, the statute restricts judicial review of the IDR entity's *payment determination*; it does not state that federal courts lack jurisdiction over independent causes of action arising from a party's fraudulent conduct in procuring that determination.

The surrounding text reinforces that conclusion. The NSA provides that an IDR entity determination "shall be binding upon the parties involved in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [IDR entity]." *Id.* § 300gg-111(c)(5)(E)(i)(I). Congress thus expressly contemplated that fraud or misrepresentation could

defeat the binding effect otherwise accorded an IDR determination. It then addressed judicial review **of the determination itself** separately, in the immediately following clause incorporating the vacatur grounds in FAA § 10(a)(1)-(4). *Id.* § 300gg-111(c)(5)(E)(i)(II). That statutory structure does not support Defendants' much broader proposition that Congress withdrew federal jurisdiction over independent claims arising from fraudulent conduct associated with an IDR proceeding.

The NSA's judicial review limitation must be construed according to its precise terms. Although Congress may restrict federal jurisdiction by expressly precluding judicial review, "[a]gency action is presumptively subject to judicial review," and that presumption is overcome only by "a clear statement of congressional intent to preclude judicial review." *Novo Nordisk Inc. v. Sec'y U.S. Dep't of Health & Hum. Servs.*, 154 F.4th 105, 111 (3d Cir. 2025). Accordingly, while courts "must give effect to Congress's will to set the limits of federal jurisdiction," they "construe jurisdiction-stripping provisions narrowly." *Id.* The Supreme Court likewise begins with the "'basic presumption of judicial review'" and requires persuasive evidence that Congress intended to foreclose it. *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 162 (2025) (citation omitted).

Novo Nordisk illustrates the required inquiry. There, Congress expressly prohibited judicial review of specified CMS "determination[s]," and the Third Circuit accordingly held that courts lacked jurisdiction to review both those determinations and "the process by which [the agency] reaches" them. 154 F.4th at 111-12 (citation omitted). But the court refused to extend that jurisdictional bar to a separate challenge to CMS rulemaking because the specified determinations did not "encompass[]" the challenged conduct. *Id.* at 112 n.2. The question here likewise is not whether the NSA contains a limitation on judicial review—it plainly does—but the scope of what

Congress made unreviewable. Notably, every court that has dismissed non-vacatur claims in other NSA cases applied out-of-circuit law or lacked the benefit of the Third Circuit's narrow-construction framework. Under *Novo Nordisk* and *Davis*, this Court applies the most restrictive standard for reading jurisdiction-stripping provisions, one that no sister court has had occasion to consider.

Congress answered that question precisely. Section 300gg-111(c)(5)(E)(i)(II) provides that "a determination of a certified IDR entity under subparagraph (A) ... shall not be subject to judicial review" except on the specified FAA grounds. Subparagraph (A), in turn, governs the IDR entity's selection of a payment amount for a qualified IDR item or service. *Id.* § 300gg-111(c)(5)(A). Congress thus made the IDR entity's determination the object of the review limitation. It did not make independent causes of action against private parties for their allegedly fraudulent conduct unreviewable. Under *Novo Nordisk*, the Court should enforce the limitation Congress enacted, not enlarge it beyond the determinations Congress identified.

Nor does *Novo Nordisk*'s recognition that a bar on review of a "determination" may extend to "the process by which" the decisionmaker reaches that determination compel a different result. 154 F.4th at 111-12. There, the challenged conduct was CMS's own methodology for making the protected determination—its grouping of products as part of the process for determining which drugs qualified for negotiation. *Id.* Highmark does not challenge an IDR entity's decisional methodology or ask the Court to correct the process by which an IDR entity evaluated the evidence before it. Counts II-VI instead challenge Defendants' own conduct—including initiating ineligible disputes, fabricating evidence, and making misrepresentations concealed from Highmark—and seek relief for injuries that conduct caused, independent of the payment amounts ultimately selected. That distinction matters because *Novo Nordisk* itself declined to extend the review bar to

conduct that did not fall within the specified determinations Congress made unreviewable. *Id.* at 112 n.2.

The scope of the NSA's judicial review limitation is distinct from the legal viability of Highmark's causes of action. As explained above, 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." *Davis*, 824 F.3d at 348. And where the asserted defect is ultimately that the plaintiff has no legally viable claim, "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Id.* at 349 (quoting *Bell*, 327 U.S. at 682). Thus, even if Defendants ultimately could establish that the NSA forecloses some or all of the relief sought through Counts II-VI, that merits question is distinct from whether those claims fall within the particular category of judicial review that Congress made jurisdictionally unavailable.

2. Highmark's Claims Challenge Independent Tortious Conduct That Caused Independent Injuries

Bromedicon's and HaloMD's jurisdictional argument fails for an additional reason: Counts II-VI do not ask this Court to reconsider whether an IDR entity selected the correct payment amount. They target Defendants' independent tortious conduct: initiating disputes that Highmark alleges were barred during the cooling-off period, falsely attesting that those disputes were eligible, submitting a sham document and false representations about Highmark's negotiation efforts, and conspiring to defraud Highmark. Compl. ¶¶ 39-80, 88-107. The alleged wrong is not that an IDR entity reached the wrong result based on the information before it. It is that Defendants allegedly used false attestations and materially misleading submissions to obtain IDR proceedings and determinations to which they were not entitled.

Critically, the alleged conduct caused injuries independent of the payment amounts selected by the IDR entities. Highmark incurred non-refundable administrative and IDR entity fees upon initiation of disputes that, according to the Complaint, should never have been initiated at all. *Id.* ¶¶ 78, 94(b). Highmark also was forced to divert substantial internal resources to detecting, investigating, and responding to Defendants' fraudulent submissions, resources that otherwise would have served Highmark's members and plan participants. *Id.* ¶¶ 79, 94(c). And Defendants' conduct damaged Highmark's relationships with self-funded employer groups, including public school districts, governmental entities, and labor unions that rely on Highmark to manage healthcare costs. *Id.* ¶ 80. Those injuries exist regardless of what payment amount any IDR entity ultimately selected, and vacatur of individual awards cannot remedy them.

Adjudicating those injuries likewise does not require the Court to determine whether any IDR entity selected the correct payment amount. The relevant question is whether Defendants themselves engaged in actionable misconduct by knowingly initiating ineligible disputes and supplying false or fabricated information to procure IDR proceedings and awards. Those questions concern Defendants' conduct, not the correctness of the IDR entities' payment determinations.

Third Circuit authority distinguishing independent claims from impermissible collateral attacks reinforces that conclusion by analogy. In the *Rooker-Feldman* context, the Court asks whether "the source of the injury" is the challenged judgment or instead "the defendant's actions"; when the latter is true, "the federal suit is independent." *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 167 (3d Cir. 2010). Thus, a claim challenging fraud in the procurement of a prior adjudication may be independent even if success could undermine that adjudication's force. *See Johnson v. Draeger Safety Diagnostics, Inc.*, 594 F. App'x 760, 765-66 (3d Cir. 2014).

So too here. Counts II-VI do not ask the Court to redetermine the proper payment amount for each disputed claim. They seek relief for Defendants' alleged fraudulent conduct and resulting injuries apart from the payment determinations. The fact that success on those claims may establish that certain determinations were procured through fraud does not transform the claims into requests for judicial review of determinations themselves. *Cf. Johnson*, 594 F. App'x at 766.

3. Defendants' Collateral-Attack Authorities Do Not Bar Highmark's Independent Claims

Bromedicon's and HaloMD's reliance on *Center for Excellence in Higher Education, Inc. v. Accreditation Alliance of Career Schools*, 166 F.4th 452 (4th Cir. 2026), and *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906 (6th Cir. 2000), is misplaced. Those decisions do not hold that every claim arising from misconduct associated with an arbitration is necessarily an impermissible collateral attack. Rather, they look to the substance of the asserted injury and relief sought, particularly whether the plaintiff's "ultimate objective" is to undo the award itself. Highmark's claims are materially different. Counts II-VI seek relief for injuries caused by Defendants' alleged misconduct itself, not merely for the adverse consequences of particular IDR payment determinations. Highmark seeks compensatory damages for, among other things, non-refundable administrative and IDR entity fees, resources diverted to detecting and investigating Defendants' alleged scheme, and harm to its business relationships, as well as prospective injunctive relief. Compl. ¶¶ 78-80, 94(b)-(c), Prayer ¶¶ (b)-(e). Those injuries exist independently of the amount selected in any particular IDR determination and cannot be remedied merely by vacating an award.

Decker illustrates the distinction. There, the plaintiff alleged that Merrill Lynch improperly interfered with an arbitration by hiring the chair of the arbitration panel and sought damages rather than vacatur. 205 F.3d at 908-09. The Sixth Circuit concluded that the damages action was an

impermissible collateral attack because the asserted injury arose from the misconduct's effect on the arbitration award: the plaintiff claimed that she "receiv[ed] a smaller arbitration award than she would have received" absent the alleged misconduct. *Id.* at 910. Her "ultimate objective" was therefore to obtain through damages the relief she contended the arbitrators should have awarded. *Id.*

That reasoning cuts the other way here. Highmark alleges that it incurred non-refundable administrative and IDR entity fees when Defendants initiated disputes that should never have been filed; expended substantial resources detecting, investigating, and responding to Defendants' allegedly fraudulent submissions; and suffered harm to its relationships with self-funded employer groups. Compl. ¶¶ 78-80, 94(b)-(c). Those injuries were caused by the alleged scheme itself and exist regardless of whether any particular IDR entity ultimately selected the correct payment amount. Nor could vacatur reimburse investigative costs, compensate for diversion of institutional resources or damage to business relationships, or prospectively prevent the initiation of allegedly fraudulent and categorically ineligible disputes. Unlike *Decker*, then, Highmark does not seek only the difference between the award it received and the award it believes it should have received. Counts II–VI allege independent injuries caused by independently actionable conduct.

Guardian Flight LLC v. Aetna Life Insurance Co., No. 3:24-cv-00680, 2026 U.S. Dist. LEXIS 133694 (D. Conn. June 16, 2026), does not require dismissal. The court dismissed Aetna's fraud and restitution counterclaims because they sought to recover payments under allegedly improper IDR awards without seeking vacatur. *Id.* at *15-17. But it separately recognized that deciding whether bifurcated claims caused delay or duplicative administrative fees would not require "scrutinizing the merits of any award." *Id.* at *18. Although the court ultimately dismissed that theory on a separate ground, because it concluded that bifurcation was permitted and therefore

exempt from liability under Connecticut law, *id.* at *18-22, that ground has no application here. Count I expressly seeks vacatur, including under § 10(a)(1), while Counts II-VI seek, at minimum, relief for separate injuries—including nonrefundable administrative fees incurred upon initiation of allegedly ineligible disputes, IDR entity fees incurred before payment determinations, investigative costs, and harm to Highmark's business relationships—that do not require the Court to decide whether an IDR entity selected the correct payment amount. Compl. ¶¶ 78-80, 94(b)-(c).

Nor does *Decker* support dismissal under Rule 12(b)(1). *Decker* treated the collateral-attack issue as a merits question, affirming dismissal because the claims "fail[ed] to state a claim upon which relief may be granted." 205 F.3d at 910. Thus, even if its collateral-attack analysis applied, *Decker* supports at most a Rule 12(b)(6) argument. *See Davis*, 824 F.3d at 348-50.

Adorers of the Blood of Christ U.S. Province v. Transcontinental Gas Pipe Line Co., 53 F.4th 56 (3d Cir. 2022), is different for a related reason. There, the Third Circuit applied the Natural Gas Act's exclusive-review scheme where the "heart" of the plaintiffs' claims challenged conduct authorized by FERC and the plaintiffs could have raised their objections through the statutory review process. *Id.* at 65-67. Highmark alleges the opposite here: it could not reasonably have raised the challenged misconduct during IDR because Defendants' submissions were not visible to Highmark and the pattern of cooling-off violations was not reasonably discoverable within the short objection period. Compl. ¶¶ 40-48, 53-55, 60-68, 92-93. Counts II-VI therefore do not merely give Highmark a second opportunity to challenge matters it could have raised through IDR; they allege misconduct and resulting injuries that Highmark could not reasonably have challenged through that process.

Defendants' reliance on *BCBS Georgia*, *BCBS Texas*, and *Anthem* is misplaced for the same reason. As explained above, those decisions arose from materially different allegations concerning

misconduct the insurers knew of, raised, or had an opportunity to raise during IDR. *See* Section III.A.1(ii) above. More fundamentally, none holds that the NSA withdraws subject-matter jurisdiction over independent claims seeking relief for a participant's allegedly fraudulent conduct.

NorthStar and *Maui Memorial* are further afield. In both, the insurer asserted only state-law fraud and declaratory claims and did not seek vacatur under the FAA grounds incorporated into the NSA; federal jurisdiction therefore depended on whether the state-law claims presented a substantial federal question under *Grable/Gunn*. *NorthStar*, 2026 U.S. Dist. LEXIS 93303, at *10-11; *UnitedHealthcare Ins. Co. v. Maui Mem'l Emergency Med. Assocs., Inc.*, No. 26-cv-00040, 2026 WL 1965882, at *4 (D. Haw. July 7, 2026). Highmark, by contrast, asserts a federal vacatur claim under the NSA's express incorporation of FAA § 10(a)(1)-(4), providing an independent basis for federal-question jurisdiction; it does not rely on its state-law claims to satisfy *Grable/Gunn*. Neither decision addresses whether the NSA strips a federal court of jurisdiction over related state-law claims once federal jurisdiction independently exists.

4. Defendants' Jurisdictional Theory Cannot Extend to Disputes Alleged to Have Been Ineligible for IDR

The categorical jurisdictional theory advanced by Bromedicon and HaloMD also cannot account for Highmark's alternative allegations concerning disputes initiated during the statutory 90-day cooling-off period. Highmark alleges that, at the time of those later initiations, the disputes were barred from submission by the statute and therefore were not eligible to proceed through the federal IDR process during that period. Compl. ¶¶ 39-48. Highmark need not allege that the underlying item or services could never become eligible; it alleges only that Defendants initiated them before the statutory window expired. Highmark may plead that theory in the alternative to its vacatur theory. *See* Fed. R. Civ. P. 8(d)(2); *Recovery Resort of the Palm Beaches LLC v. UPMC Health Plan, Inc.*, No. 2:24-CV-01177, 2025 U.S. Dist. LEXIS 141520, at *7 (W.D. Pa. July 24,

2025) (Ranjan, J.). Defendants therefore cannot rely on the IDR framework as a jurisdictional shield against claims arising from disputes that, under the Complaint's allegations, should not have entered IDR at that time.

E. ISSUE PRECLUSION DOES NOT BAR COUNTS II-VI

Bromedicon argues that Counts II-VI are barred by issue preclusion because they "require Highmark to challenge the binding determinations the IDR entities already made." Bromedicon bears the burden of establishing preclusion's applicability. *Greenway Ctr., Inc. v. Essex Ins. Co.*, 475 F.3d 139, 147 (3d Cir. 2007). It has not met that burden. Issue preclusion applies when "(1) the issue sought to be precluded [is] the same as that involved in the prior action, (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [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) (alterations in original) (citations omitted). None of these elements is satisfied.

First, Highmark's tort claims are extrinsic to the IDR process. The IDR entity never decided whether Bromedicon and HaloMD committed fraud, whether HaloMD submitted fabricated evidence, or whether Bromedicon conspired with HaloMD. The IDR entity selected one of two payment offers. That is all. *See Texas Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 110 F.4th 762, 768 (5th Cir. 2024) (the IDR entity "must choose one of the two offers"). Even if an IDR entity necessarily determined that a dispute was eligible to proceed, it did not thereby decide whether Defendants knowingly made false eligibility attestations, submitted fabricated or materially misleading evidence, or whether the "same other party" requirement was satisfied in each challenged ASO dispute. Those are different issues that Highmark's claims require proving.

Second, Highmark did not have a full and fair opportunity to litigate these claims in the IDR process. Courts have "repeatedly recognized … that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case." *Allen v. McCurry*, 449 U.S. 90, 95 (1980) (citation omitted). A "valid and final" arbitration award has preclusive effect "only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication, including the right on behalf of a party to present evidence and legal argument in support of that party's contention and fair opportunity to rebut evidence and argument by opposing parties." *Gruntal & Co. v. Steinberg*, 854 F. Supp. 324, 337 (D.N.J. 1994) (citation omitted); *see also B&B Hardware, Inc. v. Hargis Indus.*, 575 U.S. 138, 158 (2015) (giving preclusive effect to TTAB decision but emphasizing that "the TTAB allows parties to submit transcribed testimony, taken under oath and subject to cross-examination, and to request oral argument."). The IDR process has none of these features. Participants simultaneously submit blind offers; neither party can review or respond to the other side's submission or evidence; there are no witnesses, no testimony, no cross-examination, and no oral argument. *See Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1116 (11th Cir. 2025). Giving preclusive effect to the IDR process under these circumstances would violate due process. *See Commc'ns Telesystems Int'l v. California Pub. Util. Comm'n*, 196 F.3d 1011, 1018 (9th Cir. 1999) ("The Due Process Clause places some limits on the doctrine of res judicata; only proceedings that meet the minimal requirements of due process are accorded preclusive effect."); *Metro. Edison Co. v. Pennsylvania Pub. Util. Comm'n*, 767 F.3d 335, 351 n.22 (3d Cir. 2014) ("[A] party has been denied a full and fair opportunity to litigate" if procedures "fall below the minimum requirements of due process").

Third, Bromedicon and HaloMD cannot simultaneously assume the validity of the very determinations Highmark alleges were procured by fraud and seeks to vacate. If Highmark proves its vacatur claim, those determinations will not supply the valid, final adjudications on which Defendants' preclusion argument depends. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987) ("decisions procured by the parties through fraud or through the arbitrator's dishonesty need not be enforced."). At minimum, Defendants cannot obtain dismissal on preclusion grounds by assuming against the Complaint that the challenged determinations were validly procured.

Fourth, *Aghaeepour v. N. Leasing Sys., Inc.*, 378 F. Supp. 3d 254, 265 (S.D.N.Y. 2019), recognizes an exception to preclusion where fraud in an earlier proceeding was merely a means of accomplishing a broader fraudulent scheme "'greater in scope than the issues determined in the prior proceeding.'" (citation omitted). Highmark alleges precisely that.

The Third Circuit has "caution[ed] against [preclusion's] invocation … without extreme care" and stressed that "doubts about its application should usually be resolved against its use." *Witkowski v. Welch*, 173 F.3d 192, 206 (3d Cir. 1999). Bromedicon has not met its burden.

F. THE *NOERR-PENNINGTON* DOCTRINE DOES NOT IMMUNIZE BROMEDICON'S AND HALOMD'S FRAUDULENT CONDUCT

1. *Noerr-Pennington* Does Not Apply to the NSA's Private IDR Process

Noerr-Pennington protects petitioning directed at government action. *See A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 250 (3d Cir. 2001); *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 555-56 (2014). It does not apply here because the NSA's IDR process is private arbitration, not government petitioning.

Ford Motor Company v. National Indemnity Company, 972 F. Supp. 2d 862 (E.D. Va. 2013), rejected *Noerr-Pennington* protection for private arbitration because it "does not petition

the Government at all." *Id.* at 868-69. The same is true here. IDR entities "function more or less exactly like arbitrators." *Guardian Flight L.L.C. v. Medical Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 623 (5th Cir. 2025). The parties submit competing payment offers and supporting materials to a private decisionmaker resolving a commercial payment dispute. HHS's administration of the portal and federal certification of IDR entities do not change the target of Defendants' requests for payment.

Armstrong Surgical Center, Inc. v. Armstrong County Memorial Hospital, 185 F.3d 154 (3d Cir. 1999), does not suggest otherwise. It involved efforts to obtain governmental action—the denial of a certificate of need by a state agency. *Id.* at 157-58. Here, Defendants sought payment determinations from private IDR entities functioning as arbitrators.

Defendants identify no authority extending *Noerr-Pennington* to comparable private arbitration. Bromedicon relies on *Pennsylvania State University v. Keystone Alternatives LLC*, No. 1:19-CV-02039, 2020 U.S. Dist. LEXIS 144636, at *3 (M.D. Pa. Aug. 12, 2020), but that case involved a WIPO domain-name proceeding, not private arbitration between parties seeking resolution of a commercial payment dispute. And even if *Noerr-Pennington* applied, the Complaint plausibly alleges fraud sufficient to defeat immunity for the reasons below.

2. Even if *Noerr-Pennington* Applied, It Would Not Protect the Alleged Fraud

A material misrepresentation affecting the core of a proceeding can defeat *Noerr-Pennington* immunity. *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 123-24 (3d Cir. 1999). And *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), recently applied *Cheminor* at the pleading stage and held that knowing fraud or intentional misrepresentation going to the core of the underlying claims may trigger the sham exception.

That is what Highmark alleges. Defendants submitted the Sham Letter and a false account of the parties' negotiations to support Bromedicon's payment offers. Unlike *Cheminor*, where independent evidence supported the government's action, the Complaint alleges that the IDR entities expressly identified the challenged negotiation evidence as the "most persuasive" and the Sham Letter as "compelling" support for Bromedicon's offer. Compl. ¶ 68(a)-(b); *see Cheminor*, 168 F.3d at 124.

Nor does Bromedicon's overall IDR "win rate" establish immunity. *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993), addresses whether the challenged proceeding was objectively reasonable, not whether the party succeeded in other proceedings. Highmark alleges that the particular proceedings challenged here were either statutorily ineligible or procured through material misrepresentations. Success in other disputes does not establish that these proceedings were objectively reasonable.

G. THE COMPLAINT STATES CLAIMS UNDER PENNSYLVANIA LAW

Defendants' challenges to Highmark's state-law claims largely repeat arguments addressed above. The Complaint alleges that Defendants used false eligibility attestations and materially misleading submissions, including the Sham Letter and false representations about Highmark's negotiation efforts, to obtain payment determinations requiring Highmark to pay amounts it otherwise would not have owed. Those allegations state claims for fraud and intentional misrepresentation, negligent misrepresentation in the alternative, civil conspiracy, and unjust enrichment.

1. The Complaint States Claims for Fraud and Intentional Misrepresentation

Pennsylvania fraud requires a material false representation, knowledge, or recklessness as to its falsity, intent to induce reliance, justifiable reliance, and resulting injury. *Gibbs v. Ernst*, 647

A.2d 882, 889 (Pa. 1994). The Complaint alleges each. Defendants allegedly submitted false eligibility attestations and fabricated or misleading evidence; knew those representations were false; intended the IDR entities to rely on them; and obtained determinations requiring Highmark to pay Bromedicon. *See* Compl. ¶¶ 35, 56-69, 89-93.

i. The IDR Entities' Reliance Does Not Defeat Highmark's Claims

Pennsylvania law does not categorically bar a fraud claim because a third party relied on the misrepresentation. *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 Industrial Development, N.A.*, No. 3:19-152, 2022 U.S. Dist. LEXIS 158222, at *20-21 (W.D. Pa. Feb. 3, 2022). The question is whether the alleged fraud proximately caused the plaintiff's injury. *Steamfitters*, 171 F.3d at 935 & n.19. That is what Highmark alleges. Defendants intended the IDR entities to rely on their representations, knowing that the resulting determinations would impose payment obligations on Highmark. The IDR entities did rely, calling the negotiation evidence "the most persuasive" and the Sham Letter "compelling." Compl. ¶ 68(a)-(b). The false eligibility attestations likewise supplied the threshold factual premise that allowed the cooling-off disputes to proceed to payment determinations. Highmark's required participation in IDR does not break that direct causal chain; Highmark does not allege that it relied by choosing to enter IDR.

ii. The Sham Letter Contains Actionable Representations of Fact

The Sham Letter states that Bromedicon sent Highmark a formal request to negotiate in-network rates and that Highmark failed to reciprocate—specific assertions about events that either occurred or did not. Compl. ¶¶ 61-68. Those are factual representations, not merely opinion or advocacy.

2. The Complaint Alternatively States a Claim for Negligent Misrepresentation

Negligent misrepresentation requires a material misrepresentation the defendant "ought to have known" was false, intent to induce action, justifiable reliance, and resulting injury. *Gibbs*, 647 A.2d at 890. Highmark alleges that Defendants lacked reasonable grounds for their representations and intended Highmark and the IDR entities to rely on them. Compl. ¶¶ 98-102. Highmark also plausibly alleges its own reliance on false factual responses in Defendants' eligibility attestations: the volume of disputes and compressed objection period made identifying every cooling-off violation in real time practically impossible. Compl. ¶¶ 42, 46-48, 53-55, 89(b), 92, 101. *See Aetna Inc.*, 2018 WL 5264310, at *8 (finding reliance adequately pleaded despite Aetna's alleged access to information revealing the fraud).

Bromedicon's reliance on *Zaftr Inc. v. Lawrence* is misplaced. On summary judgment, it found no duty arising from an ordinary arm's-length transaction. No. 21-cv-2177, 2023 U.S. Dist. LEXIS 10240, at *79-82 (E.D. Pa. Jan. 20, 2023). Here, Defendants made formal attestations specifically for Highmark's and the IDR entities' reliance in determining eligibility and payment, which was a relationship similar to one found to be sufficient to plead negligent misrepresentation in *Castle v. Crouse*, No. 03-cv-5252, 2004 U.S. Dist. LEXIS 2123, at *23-25 (E.D. Pa. Feb. 11, 2004) (physician certified claim forms knowing trust would rely on them in paying awards).

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. *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 alleges that Bromedicon retained HaloMD as its revenue-cycle manager; HaloMD's compensation was tied to the IDR awards it obtained; and the two acted together to initiate ineligible disputes, submit materially false IDR packages, and collect the proceeds. Compl. ¶¶ 9-11, 20-28, 70, 90, 105-06. The alleged repeated use of false eligibility attestations and fabricated or misleading evidence also supports malice. And because Highmark adequately pleads fraud and intentional misrepresentation, it has pleaded an underlying tort.

The intracorporate conspiracy doctrine does not require dismissal. The doctrine applies when alleged co-conspirators act within an agency relationship rather than separate and apart, or solely for the principal's benefit. *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). Nothing in the Complaint establishes that relationship here. HaloMD and Bromedicon are separate LLCs engaged in different businesses, and HaloMD allegedly prepared and prosecuted the challenged submissions in exchange for compensation tied to the awards it obtained. Compl. ¶¶ 9-11, 20-28, 74-76. Those allegations do not require the Court to treat the two companies as a single actor at the pleading stage.

Defendants' own positions underscore the point. Bromedicon elsewhere calls the allegation that HaloMD acted as its agent an insufficient legal conclusion, while HaloMD relies on its separate corporate existence in challenging personal jurisdiction. HaloMD Br. at 12-13. The nature and scope of their relationship cannot be resolved against Highmark on the pleadings.

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 its retention inequitable. *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 the plaintiff to the defendant. *See D.A. Hill Co. v. Clevetrust Realty Invs.*, 524 Pa. 425, 432, 573 A.2d 1005, 1009 (1990).

The claim against Bromedicon is straightforward. Highmark alleges that the challenged awards required it to pay Bromedicon amounts obtained through the alleged fraud and that Bromedicon retained those payments. Compl. ¶ 110 & Ex. A, Dkt. No. 1-1. If those allegations are proven, retaining the payments would plausibly be unjust. The claim against HaloMD is also adequately pleaded. Although Highmark paid Bromedicon, HaloMD allegedly helped obtain the challenged awards and received compensation tied to those recoveries. *Id.* ¶¶ 20-28, 110. An indirect financial benefit flowing through another entity may support unjust enrichment at the pleading stage. *See Ortiz v. Keystone Premier Settlement Servs., LLC*, No. 3:23-CV-01509, 2025 U.S. Dist. LEXIS 115929, at *9-10 (M.D. Pa. June 18, 2025). HaloMD's alleged role in obtaining the awards makes its benefit more than remote or incidental.

Finally, *Danieli Corp. v. SMS Group, Inc.*, No. 21-cv-171, 2024 WL 3791894, at *16-17 (W.D. Pa. Aug. 13, 2024), does not require dismissal. The substantive tort claims there failed. Here, Highmark adequately pleads fraud and misrepresentation based on the same conduct through which Defendants allegedly obtained the challenged benefits.

H. THE COMPLAINT ADEQUATELY PLEADS A BASIS FOR DECLARATORY RELIEF

Bromedicon's argument that declaratory relief "cannot stand alone" is beside the point. *Campbell v. Pennsylvania School Boards Ass'n*, 336 F. Supp. 3d 482, 504 (E.D. Pa. 2018), found declaratory relief moot only after disposing of all underlying substantive claims. Highmark has adequately pleaded substantive claims here, so its request for declaratory relief remains viable.

I. PENNSYLVANIA'S ANTI-SLAPP STATUTE DOES NOT APPLY

Defendants' request for attorneys' fees under Pennsylvania's Uniform Public Expression Protection Act, 42 Pa. C.S. §§ 8340.11-18 fails for three independent reasons.

First, this Court has held that the Act's immunity provision does not apply in federal court because § 8340.15 conflicts with Rules 12(b)(6) and 56. *Jakes v. Youngblood*, 782 F. Supp. 3d 210, 217-18 (W.D. Pa. 2025); *see also Henrich v. Colby's Crew Rescue*, No. 25-4961, 2026 U.S. Dist. LEXIS 64006, at *24-26 (E.D. Pa. Mar. 26, 2026). 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 the opposite conclusion, *Jakes* expressly considered whether § 8340.15 could apply independently of the Act's special dismissal procedure and held that "§ 8340.15 does not apply in federal court." 782 F. Supp. 3d at 217. There is no reason for this Court to depart from its holding.

Second, Highmark's claims do not arise from "protected public expression." The NSA's IDR process is a private arbitration before private decisionmakers, not one of the governmental proceedings protected by the Act. *See* Section III.F above. And to the extent Highmark's claims rest on fabricated evidence and intentional misrepresentations, "[t]he First Amendment does not shield fraud." *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 612 (2003).

Third, the fee provision applies only when a party obtains immunity under § 8340.15. 42 Pa. C.S. § 8340.18(a)(1). Because Bromedicon and HaloMD have not established immunity, they have not established any entitlement to fees.

IV. CONCLUSION

For the foregoing reasons, Highmark respectfully requests that this Court deny Defendants' motions to dismiss in their entirety. In the alternative, Highmark requests jurisdictional discovery and/or leave to amend.

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Respectfully submitted,

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