

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 26, 2020

SEAN F. MCAVOY, CLERK

Name of U.S. District Court: Eastern District of Washington

U.S. District Court case number: 2:18-cv-00012-SMJ

Date case was first filed in U.S. District Court: 01/11/2018

Date of judgment or order you are appealing: 05/12/2020

Fee paid for appeal? (appeal fees are paid at the U.S. District Court)

Yes No IFP was granted by U.S. District Court

List all Appellants (List each party filing the appeal. Do not use "et al." or other abbreviations.)

Cynthia Harvey

Is this a cross-appeal? Yes No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case? Yes No

If Yes, what is the prior appeal case number?

Your mailing address:

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City: Seattle State: WA Zip Code: 98103

Prisoner Inmate or A Number (if applicable):

Signature /s/ Beth E. Terrell, WSBA #26759 Date May 26, 2020

Complete and file with the attached representation statement in the U.S. District Court

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (*List each party filing the appeal, do not use "et al." or other abbreviations.*)

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Appellee(s) (*List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.*)

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Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

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Continued list of parties and counsel: *(attach additional pages as necessary)*

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Telephone number(s):

Email(s):

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 12, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CYNTHIA HARVEY, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

CENTENE MANAGEMENT
COMPANY LLC and
COORDINATED CARE
CORPORATION,

Defendants.

No. 2:18-cv-00012-SMJ

**ORDER DENYING PLAINTIFF’S
MOTION FOR CLASS
CERTIFICATION**

Plaintiff Cynthia Harvey alleges Defendants Centene Management Company, LLC and Coordinated Care Corporation administered a health insurance plan (the “Ambetter” product) with a legally inadequate network of medical providers and, when members were forced to seek care outside the Ambetter network, illegally allowed them to be billed more than they would have paid for in-network services. Because the Court finds there are superior alternatives to a class action to resolve Plaintiff’s claims, and because necessary individualized determinations make a class action impractical, the Court denies Plaintiff’s motion to certify a class of all Ambetter customers between 2012 and the present.

1 **BACKGROUND**

2 Centene¹ is a provider of health insurance coverage throughout the country,
3 including in Washington State, where it sells the Ambetter insurance plan at issue in
4 this case in nineteen different counties. ECF No. 106-1 at 23. Federal law requires
5 health insurance plans like the Ambetter product offer coverage for ten categories of
6 “essential health benefits” and provide “a network that is sufficient in number and
7 types of providers” so that “all services will be accessible without unreasonable
8 delay.” 42 U.S.C. §§ 300g-13, 18022; 45 C.F.R. § 156.230(b)(2).

9 Washington law independently requires health insurance plans to provide
10 certain benefits and an adequate network of providers, including in certain
11 specialties. Wash. Admin. Code §§ 284-170-200(1)–(2), 284-170-270. Washington
12 also obligates insurers to disclose limitations on their networks and maintain up-to-
13 date provider directories. Wash. Admin. Code §§ 284-170-200(8), 284-170-260.
14 Where an insurer’s provider network is inadequate, Washington law requires it to
15 ensure that an insured may “obtain[] the covered service from a provider or facility
16 within reasonable proximity of the [insured] at no greater cost” than the insured

17
18

¹ Defendant Coordinated Care Corporation and Centene Management Company
19 LLC are both subsidiaries of Centene Corporation, which is not a named Defendant
20 in this action. Coordinated Care administers the Ambetter insurance program in
Washington while Centene Management Company provides administrative
support. ECF No. 92-1 at 185. For the sake of simplicity, unless otherwise noted,
references to “Centene” should be understood as references to both Defendants.

1 would pay in-network. Wash. Admin. Code § 284-170-200(5). The Ambetter
2 “evidence of coverage”—Centene’s contract with plan members—describes each of
3 these rights. *See* ECF No. 94 at 10–13

4 The crux of Plaintiff’s allegations is that Centene has for years failed to
5 maintain an adequate network of providers, forcing members to receive care at out-
6 of-network facilities and from out-of-network providers. *See* ECF No. 62. Plaintiff
7 alleges Centene fails to prevent members forced to seek care outside the Ambetter
8 network from being billed for the difference between what the provider or facility
9 charges and what the member would pay had they received care in-network—so-
10 called “balance billing.”² ECF No. 91 at 18. Plaintiff asserts that between 2014 and
11 2018, Centene denied thousands of claims because the member received care from
12 an out-of-network facility or provider. *Id.* at 16.

13 In 2017, Washington’s Office of the Insurance Commissioner (OIC) notified
14 Centene it had received hundreds of complaints from Washington consumers
15 concerning inadequacies in the Ambetter network and balance billing. *See* ECF
16 No. 91 at 16–17; ECF No. 94 at 93. The OIC brought enforcement action against
17 Centene, and the two eventually entered into a Consent Order by which Centene
18 agreed to pay \$1.5 million, admitted its network was inadequate and failed to provide

19 _____
20 ² Plaintiff also alleges Centene failed to protect its members from “surprise billing,”
which occurs when a member receives care at an in-network facility from an out-
of-network provider. *See* ECF No. 62; ECF No. 106-6 at 2.

1 members sufficient access to care, and agreed to follow a “Compliance Plan”
2 approved by the OIC. *See* ECF No. 94 at 92–101; ECF No. 106-2 at 2–5. The
3 Compliance Plan required Centene to address network inadequacies in certain areas
4 and provide reimbursement to members who paid out-of-network charges when no
5 in-network option was available. ECF No. 106-2 at 2–5. Centene agreed to hire an
6 independent auditor to oversee the Compliance Plan’s implementation. *Id.* at 2.

7 Centene thereafter notified more than 70,000 members that reimbursement
8 may be available for amounts paid to out-of-network providers or facilities where
9 no in-network option was available; the auditor subsequently sent follow-up letters
10 to more than 10,000 members identified based on their claims history. ECF No. 106
11 at 4–5; ECF Nos. 106-3, 106-4. Several hundred members submitted requests for
12 reimbursement, of which Centene paid 113. ECF No. 94 at 810–14. In January 2019,
13 the OIC determined Centene had satisfied the requirements of the Compliance Plan,
14 though Centene remains subject to the federal and state statutory and regulatory
15 requirements described above. *See* ECF No. 106-5.

16 On January 11, 2018, Plaintiff brought suit against Defendants on behalf of
17 herself and others similarly situated. ECF No. 1. Plaintiff alleges Centene continues
18 to maintain an inadequate network and continues to allow balance billing, in breach
19 of its contract with members and in violation of Washington’s Consumer Protection
20 Act (CPA). *See* ECF No. 62; ECF No. 91 at 20–21. Before the Court is Plaintiff’s

1 Motion for Class Certification, ECF No. 91.³ Plaintiff seeks an order certifying a
2 class of all who purchased the Ambetter product between January 11, 2012 and the
3 present. Plaintiff also seeks an order appointing herself as class representative and
4 appointing her counsel as class counsel. *Id.* at 9, 40. Defendants oppose class
5 certification. ECF No. 105. Having reviewed the briefing and the file in this matter,
6 the Court is fully informed⁴ and denies the motion because a class action is not a
7 superior vehicle to adjudicate the putative class’s claims, and issues common to the
8 class do not predominate over individualized questions of law and fact.

9 **LEGAL STANDARD**

10 Federal Rule of Civil Procedure 23 permits a representative plaintiff or group
11 of plaintiffs to sue on behalf of others similarly situated to obtain redress for wrongs
12 common to all class members. Under Rule 23(a), all putative classes must satisfy
13 four requirements, known as “numerosity, commonality, typicality, and adequate
14 representation,” designed to “effectively limit the class claims to those fairly
15 encompassed by the named plaintiff’s claims.” *Wal-Mart Stores, Inc. v. Dukes*, 564

16
17 _____
18 ³ The Motion for Class Certification was filed under seal. ECF No. 91. An identical
version of Plaintiff’s motion with limited redactions appears at ECF No. 100.

19 ⁴ Though Defendants’ motion was originally noted for hearing with oral argument,
20 the Court finds oral argument unnecessary because, having reviewed the record, the
parties’ briefs, and the relevant legal authorities, the Court is fully informed. *See*
LCivR 7(i)(3)(B)(iii).

1 U.S. 338, 349 (2011) (internal quotations omitted) (citing *Gen. Tel. Co. of Sw. v.*
2 *Falcon*, 457 U.S. 147, 156 (1982)). Putative class actions like this one which seek
3 compensatory damages must also satisfy the criteria of Rule 23(b)(3) by showing
4 that “questions of law or fact common to class members predominate” over issues
5 specific to individual members of the class, and that “a class action is superior to
6 other available methods for fairly and efficiently adjudicating the controversy.”
7 Fed. R. Civ. P. 23(b)(3); *see also Green v. Occidental Petroleum Corp.*, 541 F.2d
8 1335, 1340 (9th Cir. 1976)

9 In evaluating whether a putative class satisfies Rule 23(b)(3)’s criteria, a
10 court considers the class members’ interest in litigating separate actions, the “extent
11 and nature” of litigation “concerning the controversy already begun,” the
12 desirability or lack thereof of concentrating litigation in a single forum, and the
13 difficulties of managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D). “[B]efore
14 certifying a class, the trial court must conduct a rigorous analysis to determine
15 whether the party seeking certification has met the prerequisites of Rule 23.” *Zinser*
16 *v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

17 DISCUSSION

18 A. The putative class satisfies Rule 23(a)

19 Centene does not dispute that the putative class meets the requirements of
20 Rule 23(a), and the Court’s independent review of the record satisfies it that those

1 criteria are met. First, as to numerosity, Plaintiff represents the putative class would
2 include more than 100,000 consumers who purchased Ambetter policies since
3 January 11, 2012, *see* ECF No. 91 at 26, easily satisfying the numerosity
4 requirement. *See Garrison v. Asotin County*, 251 F.R.D. 566, 569 (E.D.
5 Wash. 2008) (“Generally, 40 or more members will satisfy the numerosity
6 requirement.”).

7 Concerning commonality, Plaintiff identifies numerous questions of law and
8 fact applicable to all putative class members, including adequacy of the Ambetter
9 network, Centene’s disclosure of inadequacies, and whether Centene’s alleged
10 wrongdoing violated Washington’s Consumer Protection Act or breached its
11 contracts with members. ECF No. 91 at 26–27. These questions, susceptible to
12 resolution on a class-wide basis, are significant enough to satisfy the requirement
13 of commonality. *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)
14 (“[C]ommonality only requires a single significant question of law or fact.” (citing
15 *Dukes*, 564 U.S. at 359)).

16 Regarding typicality, Plaintiff contends she is representative of the average
17 putative class member who suffered the injuries alleged because she received care
18 outside the Ambetter network due to the network’s inadequacy and received a
19 balance bill. ECF No. 91 at 28. Though Plaintiff’s injury likely differs in magnitude
20 from other putative class members, the typicality requirement is satisfied. *See*

1 *Lozano v. AT&T Wireless Servs., Inc.*, 504 F.3d 718, 734 (9th Cir. 2007).

2 Lastly, concerning adequacy of representation, Centene does not contest that
3 Plaintiff herself, and the several law firms which together represent her, would
4 adequately represent the interests of the putative class. Having reviewed the record
5 of Plaintiff's role in the litigation and the combined experience of Plaintiff's counsel
6 in class litigation, the Court finds no basis to question that this requirement is met.

7 **B. The putative class does not satisfy Rule 23(b)(3)**

8 The dispute over Plaintiff's motion to certify the putative class centers on the
9 requirements of Rule 23(b)(3). Namely, Centene contends class certification is
10 inappropriate because Plaintiff and others like her have superior, non-judicial
11 alternatives to a class action, and because issues common to the class do not
12 sufficiently predominate to warrant certification. *See* ECF No. 105.

13 **1. A class action is not superior to alternative remedies**

14 Centene first contends a class action is not the appropriate mechanism to
15 litigate Plaintiff's claims because Ambetter consumers who were allegedly balance-
16 billed may pursue one or more of three alternative remedies. Thus, Centene argues
17 the putative class fails Rule 23(b)(3)'s superiority requirement, which is satisfied
18 only where "no realistic alternative" to a class action exists. *Valentino v. Carter-*
19 *Wallace, Inc.*, 97 F.3d 1227, 1234–35 (9th Cir. 1996). In evaluating whether a class
20 action is superior to any alternatives, the court is not confined to considering judicial

1 methods of handling the dispute but may instead consider administrative and other
2 non-judicial avenues by which class members may obtain redress. *See Kamm v. Cal.*
3 *City Dev. Co.*, 509 F.2d 205, 210–11 (9th Cir. 1975).

4 **i. Ambetter members may seek relief from Centene directly**
5 **and appeal to an independent entity**

6 First, Centene argues that a member who allegedly paid more after receiving
7 care from an out-of-network provider due to Centene’s network inadequacy may
8 simply request reimbursement from Centene itself. ECF No. 105 at 15–17. Further,
9 it argues, a member dissatisfied with Centene’s response may appeal to an
10 Independent Review Organization (IRO), certified by the OIC, the decision of
11 which is binding on Centene. ECF No. 106-1 at 79–80. As Centene notes, Plaintiff
12 sought and received reimbursement through this process. *See* ECF No. 62 at 23.

13 Courts have concluded that a class action fails the superiority inquiry where
14 a defendant itself offers a mechanism by which putative class members may obtain
15 relief. *See, e.g., In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 214
16 F.R.D. 614, 622 (W.D. Wash. 2003) (holding class action not superior where
17 “defendants maintain refund and product replacement programs” for defective
18 products); *Webb v. Carter’s Inc.*, 272 F.R.D. 489, 504 (C.D. Cal. 2011) (holding
19 class action not superior where defendant garment manufacturer “allow[ed]
20 consumers to obtain refunds for the garments, even without a receipt, and

1 reimburse[d] consumers for out-of-pocket medical costs for treating skin irritation
2 resulting from” allegedly defective product).

3 Plaintiff argues that to deny class certification based on the availability of
4 relief from Centene would mean “any defendant with a customer service department
5 could defeat superiority by arguing that it should be allowed to handle complaints
6 in house.” ECF No. 108. The Court disagrees. Unlike the average business that
7 fields complaints from dissatisfied customers, Centene operates in a highly
8 regulated industry, bound by a web of statutory and regulatory requirements over
9 which an independent state agency, the OIC, has enforcement authority. Nor does
10 the average business permit its customers to appeal adverse decisions to an outside
11 agency, certified by state regulators, the decision of which it agrees to be bound by.
12 In short, the Court finds the putative class members have an adequate alternative to
13 class litigation by requesting reimbursement for balance billing from Centene itself
14 and, if dissatisfied, appealing to the IRO. *See Valentino*, 97 F.3d at 1234–35.

15 **ii. Ambetter members may seek assistance from the OIC**

16 Second, Centene argues an Ambetter member disinclined to seek
17 reimbursement from Centene, or dissatisfied with the results of doing so, may
18 request assistance from the OIC. ECF No. 105 at 17–19. The OIC, an independent
19 agency of the State of Washington, exists to regulate Washington insurers and
20 enforce many of the statutory and regulatory provisions Plaintiff alleges Centene

1 violated. See *What we can (and can't) do*, Office of the Ins. Comm'r Wash. State,
2 <https://www.insurance.wa.gov/what-we-can-and-cant-do> (last visited May 8,
3 2020).

4 Courts have found, where administrative avenues to relief like those offered
5 by the OIC exist, that a putative class action is not a superior mechanism for
6 adjudicating disputes. See, e.g., *Rowden v. Pac. Parking Sys., Inc.*, 282 F.R.D. 581,
7 586 (C.D. Cal. 2012) (finding state administrative mechanism for settling citizens'
8 claims superior to class litigation). As set out above, the Court's superiority analysis
9 is not limited to evaluating whether the putative class members would be better off
10 pursuing individual civil lawsuits against Centene. For example, in *Kamm v.*
11 *California City Development Company*, the Ninth Circuit held a putative class
12 action failed the superiority test where state regulators had already sued the
13 defendant, resulting in a settlement agreement by which the defendant agreed to
14 reimburse aggrieved parties. 509 F.2d at 207–13. The Ninth Circuit emphasized a
15 class action was not a superior alternative to the existing procedures given (1) the
16 necessary expenditure of judicial resources in a class action, (2) variations in the
17 relief sought by class members, (3) the existence of significant relief available
18 through the state settlement, (4) the existence of the consent decree over which the
19 state court maintained jurisdiction, and (5) the continuing viability of individual
20 suits for those inclined to pursue them. *Id.* In sum, given the availability of

1 assistance from the OIC and the relief it is capable of providing, Plaintiff has failed
2 to show no realistic alternatives to a class action exist, and Rule 23(b)(3)'s
3 superiority requirement is not satisfied. *Valentino*, 97 F.3d at 1234–35.

4 **iii. Ambetter members may participate in the Compliance Plan**

5 Finally, Centene argues Ambetter members may pursue reimbursement for
6 costs incurred due to the Ambetter network's inadequacies by participating in the
7 OIC-ordered Compliance Plan. ECF No. 105 at 19–23; *see also* ECF Nos. 106-2,
8 106-3. Pursuant to the requirements of that plan, Centene argues, more than 80,000
9 notices concerning members' right to seek reimbursement for out-of-network costs
10 were sent, and in cases where Centene found the consumer was in fact charged more
11 than was appropriate, the consumer was reimbursed with 8% annual interest. *See*
12 ECF No. 105 at 19–20; ECF No. 106-2 at 5. As described above, courts have
13 regularly found putative class actions fail the superiority requirement where an
14 existing scheme offering reimbursement to putative class members exists, and the
15 Court concludes the Compliance Plan affords aggrieved members just such an
16 avenue to reimbursement. *See Kamm*, 509 F.2d at 213; *Rowden*, 282 F.R.D. at 586.

17 Plaintiff contends the efficacy of the Compliance Plan—like contacting
18 Centene or the OIC—depends in large part on injured Ambetter members to “self-
19 identify as having been improperly billed and document their claim.” ECF No. 91
20 at 20; *see also* ECF No. 108 at 7. But as Centene points out, the OIC-approved

1 Compliance Plan alone resulted in more than 80,000 notices sent to members of
2 their potential right to reimbursement, and each member’s “evidence of coverage”
3 notifies them of their right to request reimbursement for balance bills or contact the
4 OIC. *See* ECF No. 106-1 at 80. Plaintiff fails to explain how a notice sent to class
5 members would yield a greater response. As such, the Court finds the Compliance
6 Plan as well as directly contacting Centene or the OIC, constitute adequate
7 alternatives to a class action, and Rule 23(b)(3)’s superiority requirement is not
8 satisfied.⁵ *Valentino*, 97 F.3d at 1234–35; *see also Rutledge v. Elec. Hose & Rubber*
9 *Co.*, 511 F.2d 668, 673 (9th Cir. 1975) (holding class action must be “superior to,
10 and not just as good as, other available methods for handling the controversy”).

11 **2. Common issues do not predominate**

12 Second, Centene argues the putative class fails Rule 23(b)(3)’s requirement
13 that common questions of law or fact “predominate” over individualized inquiries.
14 ECF NO. 105 at 23–39. In evaluating predominance, the court is primarily

15
16 ⁵ As for Plaintiff’s claims not redressable through these alternatives—namely, her
17 claims for breach of contract and Washington’s CPA, the Court notes the typical
18 economic disincentive attendant individual lawsuits that are addressed by class
19 action litigation—namely, the high cost of litigation and minimal possible
20 recovery—are alleviated as to Plaintiff’s claims under the Washington CPA, which
permits recovery of treble damages and attorney fees to the successful plaintiff. *See*
Wash. Rev. Code § 19.86.090. Though Plaintiff is correct that this goes a long way
toward eliminating the concern that her attorneys would profit from success more
than the putative class would, *see* ECF No. 108 at 5 n.1, it cuts equally against the
superiority of a class action to vindicate Plaintiff’s and others’ CPA claims.

1 concerned with “the balance between individual and common issues.” *In re Wells*
2 *Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 959 (9th Cir. 2009). The
3 predominance inquiry is “far more demanding” than Rule 23(a)’s threshold
4 commonality requirement, *see Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 624
5 (1997), and the court has a “duty to take a ‘close look’ at whether common questions
6 predominate over individual ones.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 34
7 (2013) (internal quotations omitted) (quoting *Amchem Prod., Inc.*, 521 U.S. at 615).
8 The court must assure itself that the “common, aggregation-enabling, issues in the
9 case are more prevalent or important than the non-common, aggregation-defeating,
10 individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016).

11 The gravamen of Plaintiff’s claims is that she and others similarly situated
12 paid more than they should have because they were forced, by Centene’s inadequate
13 provider network, to seek medical care at an out-of-network facility or from an out-
14 of-network provider. *See* ECF No. 62. Though adjudicating her claims would no
15 doubt entail resolving common questions of fact (were an adequate number of
16 anesthesiologists available in Benton County in 2015?) and law (did Centene’s
17 conduct breach its contract with members or the Washington CPA?), inquiries of
18 class-wide applicability would not predominate.

19 Were the putative class certified, providing complete relief would first
20 necessitate resolving the threshold issue of injury-in-fact, determining (1) which

1 among the more than 100,000 class members received out-of-network care, and (2)
2 among those, which were forced to do so by the inadequate network and obtained
3 care otherwise covered by the Ambetter policy. The necessity of these fact-specific
4 determinations is applicable to Plaintiff's CPA and breach of contract claims, both
5 of which require a showing of damages. *Hangman Ridge Training Stables v. Safeco*
6 *Title Ins. Co.*, 719 P.2d 531, 539–40 (Wash. 1986) (en banc); *DC Farms, LLC v.*
7 *Conagra Foods Lamb Weston, Inc.*, 317 P.3d 543, 553 (Wash. Ct. App. 2014).

8 Plaintiff herself recognizes that many of those swept up in the broad definition
9 of the proposed class—all those who purchased Ambetter policies since 2012, *see*
10 ECF No. 91 at 9—received no out-of-network care, or did so under circumstances
11 not entitling them to reimbursement. *See* ECF No. 91 at 28; ECF No. 95 at 8
12 (identifying claims for 99,439 members within class definition), *id.* at 20 (noting
13 only 14,117 class members “may have” received a balance bill). Nor does Plaintiff
14 suggest that identifying those to whom reimbursement is owed would be anything
15 other than a laborious, record-intensive task. Tellingly, though she suggests around
16 14,000 members may have received balance bills, she admits this number is only an
17 estimate—no doubt because whether those excess charges were improper
18 necessitates analysis of each case's specific facts.⁶ ECF No. 108 at 10. (“[A]t least

19
20 ⁶ To reach this estimate, it appears Plaintiff identified claims submitted by out-of-
network providers for which Centene or the member—by virtue of coinsurance or
any applicable deductible—paid less than the full amount billed by the provider.

1 14,037⁷ class members *likely* were balance billed.” (emphasis added)).

2 That the proposed class would inevitably contain many members who never
3 suffered the alleged primary injury is itself fatal to Plaintiff’s motion. *See Mazza*,
4 666 F.3d at 595 (finding no predominance where “it is likely that many class
5 members were never exposed to the allegedly misleading advertisements”); *Andrews*
6 *v. Plains All Am. Pipeline, L.P.*, 777 Fed. App’x 889, 892 (9th Cir. 2019) (“Because
7 individual class members will need to present varying evidence to demonstrate
8 causation and injury . . . common issues of fact do not predominate.”). Nor would
9 the individualized issues end at injury-in-fact. For those members to whom *some*
10 reimbursement is due, the question of *how much* would entail yet further analysis of
11 the specifics of each case, requiring the Court to determine the difference between
12 the out-of-network charges and what the member would have paid to an in-network

13

14 *See* ECF No. 95 at 14–20. But this method does not appear capable of identifying
15 whether the member subsequently received a bill for the cost differential nor, more
16 importantly, whether any such balance billing was improper due to Centene’s
network inadequacy. Nor does it purport to. *See id.* (noting result of analysis
included claims that “*may have* resulted in Balance Bills” (emphasis added)).

17 ⁷ Plaintiff’s estimate of the number of members who may have received balance
18 bills is inconsistent throughout the record. *See* ECF No. 91 at 25 (“Centene’s data
19 also shows that 14,117 members may have been improperly balance billed.”); ECF
20 No. 95 at 20 (same); ECF No. 108 at 14 (“[A]t least 14,037 class members likely
were balance billed.”); ECF No. 110 at 24 (supplemental declaration estimating
14,089 potentially balance-billed members). Though certainly not dispositive, the
Court believes these shifting estimates illustrate the difficulty inherent in
identifying members improperly balance billed.

1 provider or facility, what portion of that amount the member in fact paid, the extent
2 to which any deductible or co-payment might offset the member's right to
3 reimbursement, and the extent to which Centene already reimbursed the member
4 through any of the mechanisms described above.

5 In short, though a class action would no doubt resolve some class-wide issues
6 in a single proceeding, it would then entail thousands of individualized
7 determinations of whether, and if so to what extent, a member was injured by
8 Centene's alleged network inadequacy. The proposed class fails Rule 23(b)(3)'s
9 predominance requirement. *See Comcast Corp.*, 569 U.S. at 34.

10 CONCLUSION

11 Plaintiff credibly contends she and others like her were deprived of an
12 adequate network of in-network medical providers and facilities—benefits for
13 which she and other Ambetter members paid, and to which the law entitled her. But
14 Centene has established that those aggrieved by this alleged inadequacy may avail
15 themselves of at least three adequate—and, presumably, cheaper and quicker—
16 mechanisms by which to seek reimbursement. Even if adjudicating those claims in
17 a federal court were the most efficient approach, the scores of individualized
18 determinations required for the Court to award relief render a class action
19 inappropriate. The motion is denied.

20 //

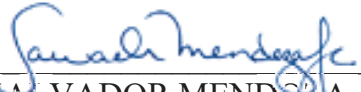
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Accordingly, **IT IS HEREBY ORDERED:**

Plaintiffs’ Motion for Class Certification, **ECF Nos. 91, 100**, is
DENIED.

IT IS SO ORDERED. The Clerk’s Office is directed to enter this Order and provide copies to all counsel.

DATED this 12th day of May 2020.


SALVADOR MENDOZA, JR.
United States District Judge