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Honorable Salvador Mendoza, Jr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

CYNTHIA HARVEY and STEVEN A. MILMAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CENTENE CORPORATION, COORDINATED CARE CORPORATION, and SUPERIOR HEALTHPLAN, INC.,

Defendants.

No. 2:18-CV-00012-SMJ

CENTENE CORPORATION'S MOTION TO DISMISS

(Oral Argument Requested)

Waiting on Plaintiffs' availability for oral argument.

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Defendant Centene Corporation ("Centene"), through undersigned counsel, hereby moves to dismiss the Complaint in this action pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

The claims in this suit arise out of health insurance contracts that the two named Plaintiffs entered into with two of Centene's subsidiaries, Coordinated Care Corporation ("Coordinated Care") and Superior HealthPlan, Inc. ("Superior"). Neither Plaintiff has a contract with Centene, which is not licensed to do business or sell insurance in Washington. Centene is a holding company that has no offices, employees, or accounts in Washington.

Plaintiffs' claims against Centene should be dismissed for two main reasons. First, because Centene does not have sufficient contacts with the state of Washington in connection with the allegations in this suit, the Court lacks personal jurisdiction over it. Second, because Plaintiffs' claims arise out of their contracts and interactions with Coordinated Care and Superior, not Centene, they have failed to state a claim against Centene. The Complaint's conclusory and implausible allegations that the companies are alter egos do not change either result.

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BACKGROUND

Centene is a Delaware Corporation headquartered in St. Louis, Missouri. Complaint, ECF No. 1, ¶ 3. Centene is a holding company and has no employees or office in the state of Washington. Decl. of Tricia Dinkelman, ECF No. 16.2, ¶¶ 4, 6. It is not licensed to conduct business or sell insurance in Washington. *Id.* ¶ 5.

Some of Centene's subsidiaries sell health insurance. Its family of companies offers both Medicaid managed-care solutions as well as private insurance. Compl. ¶¶ 22–23. Among the Centene family's private insurance offerings are health insurance exchange plans under the Affordable Care Act ("ACA"). *Id.* Centene does not sell plans on the ACA marketplaces itself; rather, its subsidiaries sell plans under the Ambetter brand. *Id.* ¶¶ 4–5.

Coordinated Care is an Indiana corporation with its headquarters in Indianapolis, Indiana, and is a wholly owned subsidiary of Centene. *Id.* ¶ 4; Dinkelman Decl., ECF No. 16.2, ¶ 14. Coordinated Care sells Ambetter plans in Washington under the name "Ambetter from Coordinated Care." Compl. ¶ 60. Coordinated Care is licensed to sell insurance in Washington. ECF No. 16.2 ¶ 17. Coordinated Care is managed by its own board of directors, which meets regularly and keeps its own minutes and agendas. *Id.* ¶¶ 18-19. It maintains its own accounts and meets Washington's insurance reserve requirements. *Id.* ¶ 20.

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Superior is a Texas corporation with its headquarters in Austin, Texas, and is a wholly owned subsidiary of Centene. Compl. ¶ 5. Superior sells Ambetter plans on the Texas Health Insurance Marketplace. *Id.* Superior is licensed to sell insurance only in Texas. Dinkelman Decl., ECF No. 16.2, ¶ 24. Superior is managed by its own board of directors, which meets regularly and keeps its own minutes and agendas. *Id.* ¶ 27–28. Superior maintains its own accounts and is adequately capitalized to conduct its insurance business. *Id.* ¶ 29.

Cynthia Harvey is a Spokane, Washington resident. Compl. ¶ 1. Ms. Harvey alleges that she purchased an "Ambetter from Coordinated Care" plan on the Washington Health Benefits Exchange website in December 2016. *Id.* ¶ 59. Before doing so, she allegedly reviewed three documents posted on the exchange website that explained the Ambetter from Coordinated Care plan. *Id.* Ms. Harvey alleges that she required a visit to an emergency room in 2017, where she was treated by an out-of-network physician, leading to a charge from the out-of-network physician of $1,544. *Id.* ¶ 60. According to the Complaint, there were no in-network emergency room doctors in Spokane at the time. *Id.* Ms. Harvey also alleges that when she received a colonoscopy, which was a preventive care service available to her under her plan, her claim was in part denied. *Id.* ¶ 61. Ms. Harvey

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alleges that other claims she made against her insurance were improperly denied as well. *Id.* ¶ 62.

Steven Milman is a dentist from Travis County, Texas. Compl. ¶ 2. He purchased an Ambetter plan from Superior in January 2017, allegedly based on a representation he viewed on Superior's website that the Austin Diagnostic Clinic was an in-network facility. *Id.* ¶ 63. In fact, according to the Complaint, the Austin Diagnostic Clinic was no longer accepting Ambetter patients. *Id.* ¶ 64. Dr. Milman alleges that he was unable to find an in-network primary care physician, was at one point assigned to an obstetrician, and therefore terminated his insurance with Superior on August 1, 2017. *Id.* ¶¶ 65–66.

Based on the above allegations, Plaintiffs bring four claims. Count One alleges that Plaintiffs' plans did not meet the ACA's requirements. Count Two alleges that the Defendants breached their contracts with Plaintiffs. Counts Three and Four allege that Defendants' practices violated Washington and Texas consumer protection laws, respectively. Plaintiffs purport to bring this action on behalf of a nationwide class (as to Counts One and Two) and on behalf of Washington and Texas sub-classes (as to Counts Three and Four, respectively).

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ARGUMENT

When challenged by a defendant under Federal Rule of Civil Procedure 12(b)(2), a plaintiff bears the burden of setting forth a prima facie case that personal jurisdiction is proper. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). The plaintiff is entitled to inferences in her favor, and a complaint's uncontroverted allegations are taken as true, but where factual disputes exist "[a] plaintiff may not simply rest on the bare allegations of the complaint." *Id.* (internal quotation marks omitted). In the class action context, the named plaintiffs must demonstrate personal jurisdiction based upon their own claims. *Senne v. Kansas City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 1022 (N.D. Cal. 2015).

To survive a motion under Rule 12(b)(6), a plaintiff must plead "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "Threadbare recitals of the elements of a cause of action" or "formulaic recitation[s] of the elements of a cause of action" are not sufficient under the *Iqbal* standard. *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't*, 911 F. Supp. 2d 1118, 1123 (E.D. Wash. 2012) (internal quotation marks omitted), *aff'd*, 770 F.3d 834 (9th Cir. 2014).

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I. This Court Lacks Personal Jurisdiction Over Centene.

This Court may exercise personal jurisdiction over Centene with respect to Ms. Harvey's claims to the extent that a Washington state court of general jurisdiction could do so. Fed. R. Civ. P. 4(k)(1)(A); *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014). Washington's long-arm statute permits the exercise of personal jurisdiction to the same extent that the Fourteenth Amendment's Due Process Clause allows. *See, e.g.*, *SeaHAVN Ltd. v. Glitnir Bank*, 226 P.3d 141, 149 (Wash. Ct. App. 2010). Accordingly, the question before the Court is whether the exercise of personal jurisdiction over Centene "comports with the limits imposed by federal due process on the State of [Washington]." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (internal quotation marks omitted). Because Centene has no jurisdictionally relevant contacts with Washington, the answer is no.

There are two types of personal jurisdiction—general and specific. General jurisdiction permits plaintiffs to sue a defendant in a jurisdiction on any claim, no matter where it arose, if the defendant has such "continuous and systematic" connections with the jurisdiction as to be "essentially at home" there. *Bauman*, 134 S. Ct. at 754 (internal quotation marks omitted). Only in an "exceptional case"—and this is not one—would general jurisdiction exist outside the states in which a corporation is incorporated or has its principal place of business. *Id.* at

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761 n.19. The Complaint recognizes that Centene is incorporated in Delaware and that its principal place of business is in Missouri. Compl. ¶ 3. This Court therefore cannot exercise general jurisdiction over Centene.

For specific personal jurisdiction to be permissible, "the defendant's suit-related conduct must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121. This substantial connection exists when three requirements are met. First, the defendant must "purposefully direct his activities" toward the jurisdiction or "purposefully avail himself of the privileges of conducting activities in the forum." *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). Second, the plaintiff's claims must "arise[] out of or relate[] to the defendant's forum-related activities." *Id.* (internal quotation marks omitted). Third, the exercise of jurisdiction must be reasonable. *Id.* The plaintiff bears the burden of proving the first two requirements, *id.*, and Ms. Harvey can meet neither.

A. Centene's Contacts with Washington Cannot Support Specific Personal Jurisdiction.

Centene's "suit-related conduct" does not "create a substantial connection" with Washington, *Walden*, 134 S. Ct. at 1121, and Centene cannot be said to have purposefully directed its conduct toward the state. In fact, Centene's suit-related

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conduct is minimal, at best. Centene is a holding company. It does not operate in Washington or have employees or property there. It is not licensed to do business in Washington, and it does not sell insurance in Washington. It has no contractual relationship with Ms. Harvey.

In an attempt to manufacture contacts with Washington, the Complaint includes a handful of statements from the Centene and Ambetter websites, which are visible worldwide. According to the Complaint, Centene's website notes that Coordinated Care sells Ambetter plans in Washington, Compl.¶ 4, and the Ambetter website notes that Ambetter is Centene's brand of marketplace insurance plans, *id.* ¶¶ 27–28, 30. The Complaint later mentions statements on the Ambetter website that apply to the brand's plans generally, such as their status as Qualified Health Plans, *id.* ¶ 49, and their inclusion of coverage for Essential Health Benefits, *id.* ¶¶ 51–52. Finally, the Complaint notes that the Ambetter website contains a provider directory. *Id.* ¶ 53.

These generalized statements about Centene's Ambetter products do not support jurisdiction in Washington. "[A] mere web presence is insufficient to establish personal jurisdiction." *Holland Am. Line Inc. v. Wärtsilä N.A., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007). In *Holland America,* the plaintiff attempted to establish jurisdiction against a Finnish parent company in part based on its website.

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The company's website "provid[ed] information on the various products manufactured by" the family of companies and "redirect[ed] potential customers to the appropriate subsidiary" for making purchases. *Id.* That "passive website" was not "purposefully directed to the forum state of Washington," the Ninth Circuit held. *Id.*; *see also Seedman v. Cochlear Ams.*, No. SACV 15-00366 JVS (JCGx), 2015 WL 4768239, at *5 (C.D. Cal. Aug. 10, 2015) (website feature that informed customers about "nearby clinics that offer" defendant's products did not suffice for jurisdiction). Similarly here, personal jurisdiction cannot arise merely from generalized information or a provider directory on the Centene and Ambetter websites.

Moreover, to any extent that the Centene or Ambetter websites do create contacts with Washington, Ms. Harvey's claims in the Complaint do not "arise[] out of or relate[] to" those contacts. *Axiom Foods*, 874 F.3d at 1068. As the Plaintiffs admit, Ms. Harvey purchased her plan "from [Centene's] Washington subsidiary Coordinated Care on the Washington Benefit Health Exchange." Compl. ¶ 59. Ms. Harvey complains that her insurance plan was deficient under the ACA, and that she did not receive the services she contracted for from Coordinated Care. Those claims are properly directed at Coordinated Care alone, and neither has anything to do with the Centene or Ambetter websites. And to the

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extent that Ms. Harvey bases her state law consumer protection claim on alleged misrepresentations, she does not allege that she received those misrepresentations from the Centene or Ambetter websites; she claims that she received them from documents that Coordinated Care had put on the Washington Health Benefits Exchange website. *Id.*; *see Black v. Ritz-Carlton Hotel Co.*, 977 F. Supp. 2d 996, 1007 (C.D. Cal. 2013) (claims did not arise out of or relate to representations on defendant's website because "Plaintiff did not book her vacation through the website").

B. Coordinated Care and Centene Are Not Alter Egos.

The Complaint may also be read to suggest that Plaintiffs assert personal jurisdiction over Centene based on the Washington contacts of Coordinated Care. However, "[t]he existence of a parent-subsidiary relationship is insufficient, on its own, to justify imputing one entity's contacts with a forum state to another." *Ranza*, 793 F.3d at 1070. In very rare circumstances, courts may use an alter ego theory to find personal jurisdiction based on a related company's contacts, but this case does not present such a circumstance.

To find jurisdiction over a parent based on a subsidiary's contacts, the plaintiff must demonstrate that the parent "controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former," meaning that the

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parent exercises "*pervasive* control over the subsidiary" and "dictates *every facet* of the subsidiary's business." *Id.* at 1073 (emphases added) (internal quotation marks omitted). Moreover, even where such complete control is exercised, the plaintiff must further show that "failure to disregard their separate identities would result in fraud or injustice." *Id.* (internal quotation marks omitted).

Plaintiffs state, in conclusory terms, that Coordinated Care and Superior are "shells and alter egos of their parent Centene," Compl. ¶ 3, but provide few facts that could support such an assertion. The apparent basis for Plaintiffs' alter ego allegations is that Centene's "consolidated financial statements and federal tax returns" incorporate its subsidiaries' information, *id.*, and that Centene allegedly "controls the day-to-day operations of its subsidiaries," as apparently evidenced by the fact that their websites describe the Ambetter brand of products "in substantially the same language, and often verbatim," *id.* ¶ 29.

The suggestion that Centene manages Coordinated Care's operations is simply false. Centene is merely a holding company. Dinkelman Decl., ECF No. 16.2, ¶ 4. Its board of directors receives high-level financial information about the company's subsidiaries, but it does not manage their day-to-day operations. *Id.* ¶¶ 11-12. Coordinated Care is governed by its own board of directors, none of whom are also Centene directors. *Id.* ¶ 18. Coordinated Care's board meets regularly and

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keeps its own minutes. *Id.* ¶ 19. Coordinated Care maintains its own accounts and meets the state's reserve requirements. *Id.* ¶ 20.

In *Ranza*, the Ninth Circuit explained the requirements of an alter ego theory in a case involving Nike and its Dutch subsidiary, NEON. The court recognized that Nike was "heavily involved in NEON's operations," including by "exercis[ing] control over NEON's overall budget," "establish[ing] general human resource policies," participating in some hiring decisions, and "ensur[ing] the Nike brand is marketed consistently throughout the world." *Ranza*, 793 F.3d at 1074. Even those contacts were not enough to demonstrate an alter ego theory of jurisdiction. The fact that the parent company was "active in macromanagement issues" did not demonstrate sufficient control, the Ninth Circuit held, particularly where "nothing suggests the entities failed to observe their separate corporate formalities." *Id.* at 1075.

The relationship between Centene and Coordinated Care is no closer than the relationship between Nike and NEON was in *Ranza*. Centene is a holding company; its board does not manage the day-to-day operations of all of its subsidiaries. *See Sarkisyan v. CIGNA Healthcare, Inc.*, No. CV 09-05010 GAF (RCx), 2009 WL 10671423, at *5 (C.D. Cal. Nov. 24, 2009) (finding no alter ego jurisdiction where facts were "consistent with CIGNA's status as a holding

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company/investor" in subsidiaries' insurance businesses). The fact that subsidiaries' websites speak of Ambetter plans in similar terms reflects only that the Centene family "ensures the [Ambetter] brand is marketed consistently throughout the [nation]." *Ranza*, 793 F.3d at 1074.

Nor do consolidated financial statements or tax returns raise any inferences that would support an alter ego finding. Virtually all major corporations file consolidated financial statements, yet that has never been considered sufficient to satisfy the alter ego test. *See Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996) ("LBC's decision to include Keystone in its consolidated tax return hardly demonstrates domination . . . ."). And Plaintiffs do not allege that Centene and its subsidiaries ignore corporate formalities through, say, commingling funds or other improper conduct.

Moreover, the Complaint is void of any explanation of how a failure to pierce the corporate veil would "result in fraud or injustice." *Ranza*, 793 F.3d at 1073 (internal quotation marks omitted). Coordinated Care has its own accounts and meets Washington's insurance reserve requirements. Dinkelman Decl., ECF No. 16.2, ¶ 20. Plaintiffs do not allege that Coordinated Care is undercapitalized or that it is not financially able to provide the insurance it contracts to provide. Plaintiffs claim that Centene uses subsidiaries to "shield itself from liability,"

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Compl. ¶ 3, but they do not explain the basis for that allegation. Accordingly, Plaintiffs have failed to establish personal jurisdiction on an alter ego theory.

II. In the Alternative, This Court Lacks Personal Jurisdiction Over Centene as to Claims that Did Not Arise in Washington.

Even assuming that Ms. Harvey could establish personal jurisdiction over Centene for her claims, recent Supreme Court precedent demonstrates that this Court may not exercise personal jurisdiction over Centene for claims that arose outside the state of Washington.

In *Bristol-Myers Squibb Co. v. Superior Court*, the Supreme Court recently clarified the permissible scope of personal jurisdiction in cases where a group of plaintiffs attempt to hale a defendant into court based on contacts that the defendant had with only some of them. 137 S. Ct. 1773 (2017). The plaintiffs in *Bristol-Myers*—some 600 individuals who took the drug Plavix, most of whom were not California residents—sued Bristol-Myers Squibb (BMS) in California state court based upon allegations that the drug injured them. *Id.* at 1778. Although it was undisputed that BMS did not develop or manufacture the drug in California, *id.*, the California courts had held that personal jurisdiction existed for all the claims because "the claims of the nonresidents were similar in several ways to the claims of the California residents." *Id.* at 1779.

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The Supreme Court reversed. The chief concern of personal jurisdiction jurisprudence, the Court noted, is "the burden on the defendant" of litigating in a forum. *Id.* at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). That burden arises not merely from inconvenience but also from being forced to "submit[] to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* Indeed, as the Court recognized, the exercise of personal jurisdiction across state lines implicates sovereignty and federalism concerns that limit the power of courts to reach across those lines. *Id.* at 1780–81. Determining that there was no "adequate link between [California] and the nonresidents' claims," the Supreme Court held that the Due Process Clause did not permit personal jurisdiction over those out-of-state claims. *Id.* at 1781.

For the same reasons that the California courts in *Bristol-Myers* did not have personal jurisdiction over the claims of non-resident plaintiffs, Washington courts would not have jurisdiction over Centene for the claims of non-resident plaintiffs here. Under the Federal Rules of Civil Procedure, this Court can exercise personal jurisdiction to the extent that a Washington state court could do so. Fed. R. Civ. P. 4(k)(1)(A). Just as BMS did not manufacture or develop Plavix in California, Plaintiffs here do not allege that Centene has done anything that connects Washington to the alleged injuries of non-Washington class members. Instead,

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Plaintiffs allege that Centene acts through separate "subsidiaries in each state in which it offers insurance." Compl. ¶ 3. That being the case, the sovereignty and federalism concerns that the Court recognized in *Bristol-Myers* apply just as strongly here. *See Bristol-Myers*, 137 S. Ct. at 1780 (recognizing that personal jurisdiction restrictions "are a consequence of territorial limitations on the power of the respective States") (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)); *see also DeBernardis v. NBTY, Inc.*, No. 17-C-6125, 2018 WL 461228, at *2 (N.D. Ill. Jan. 18, 2018) (dismissing out-of-state claims based upon "the Supreme Court's comments about federalism" in *Bristol-Myers*).

III. The Complaint Fails To State Any Claim Against Centene.

Ms. Harvey and Dr. Milman contracted for insurance with Coordinated Care and Superior, respectively. Compl. ¶¶ 59, 63. Neither Plaintiff has or ever had a contract with Centene. Because all of the named Plaintiffs' claims arise out of their contracts with the subsidiary companies, they have failed to state any claims against Centene. Conclusory and implausible allegations of alter ego liability do not rescue these claims.

A. Plaintiffs' ACA Claims Do Not Lie Against Centene.

In Count I, Plaintiffs purport to sue all Defendants for violating the ACA. *See id.* ¶¶ 77–85. Centene agrees with and incorporates the argument in

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Coordinated Care's motion to dismiss, *see* Coordinated Care Mot., ECF No. 17 at 4–11, that the ACA claim fails because the provisions of the ACA under which the Plaintiffs purport to sue do not provide a private right of action. But the ACA claim has not been pleaded against Centene in any event, because—as the Complaint notes—it is Plaintiffs' "health plans" that are subject to the ACA's requirements. Compl. ¶ 78; *see* 42 U.S.C. § 18031(c)(1). Because Ms. Harvey and Dr. Milman purchased their health plans from Coordinated Care and Superior, not Centene, Centene is not a proper defendant for this claim.

B. Plaintiffs' Breach of Contract Claims Fail Because They Did Not Contract with Centene.

Count II of the Complaint is a breach of contract claim. *See* Compl. ¶¶ 86–95. A breach of contract claim does not lie without a valid contract. *E.g.*, *Park v. Ross Edwards, Inc.*, 706 P.2d 1097, 1099 (Wash. Ct. App. 1985) (upholding dismissal of specific performance claim based upon finding that "there was no contract"); *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 222 & 222 n.1 (Tex. 1992) (holding that no breach of contract claim lay because "there was no contract"). Again, Ms. Harvey and Dr. Milman never had a contract with Centene; they contracted with Coordinated Care and Superior. Accordingly, neither states a breach of contract claim against Centene.

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C. Centene Did Not Violate Washington's Consumer Protection Act.

Ms. Harvey alleges that the Defendants violated Washington's Consumer Protection Act (CPA) as to her by failing to maintain an adequate network of emergency room doctors in Spokane, refusing to pay legitimate claims, failing to address her complaints, and running afoul of state and federal insurance regulations. Compl. ¶¶ 60–62. Assuming that these allegations would otherwise state a CPA claim, none of these allegations apply to Centene because Ms. Harvey did not purchase her plan from Centene. *See Alexander v. Sanford*, 325 P.3d 341, 368 (Wash. Ct. App.) (CPA claim in connection with condominium purchases failed against defendants because "none of the plaintiffs purchased their units from" those defendants), *rev. granted*, 339 P.3d 634 (Wash. 2014).

Ms. Harvey also alleges that the Defendants did not provide the benefits that were represented to be in the plan and omitted material facts about the plan's actual benefits. Compl. ¶ 99. For the same reason, these allegations do not apply against Centene because she did not buy *from Centene* the plan that allegedly did not match the representations she claims to have received. These allegations fail as to Centene for the further reason that Ms. Harvey cannot demonstrate that any misrepresentations that Centene allegedly made were the proximate cause of her injuries. *See Alexander*, 325 P.3d at 368 (recognizing that proximate causation is

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an element of CPA claim). Ms. Harvey pleads that she reviewed documents on the Washington Health Benefits Exchange website before deciding to purchase a plan from Coordinated Care. *See* Compl. ¶ 59. All of those representations were from Coordinated Care. The fact that Centene's copyright was on one of the documents, *id.*, is irrelevant, where it is obvious in context that Coordinated Care, as the plan sponsor, was making the representation.

D. Centene Did Not Violate the Texas Deceptive Trade Practices Act.

In Count IV, Dr. Milman alleges that the Defendants violated the Texas Deceptive Trade Practices Act ("TDTPA") as to him. *See* Compl. ¶¶ 106–117. To the extent that he bases this claim on the alleged failure of his plan to provide him a primary care physician, *see id*. ¶¶ 64–65, the Complaint provides no basis for holding Centene liable for this claim, because Centene was not his plan provider. And to the extent he bases this claim on an alleged misrepresentation made to him about the in-network status of the Austin Diagnostic Clinic, he alleges that Superior, not Centene, was responsible for this representation. *Id.* ¶ 63; *see McLaughlin, Inc. v. Northstar Drilling Techs., Inc.*, 138 S.W.3d 24, 30 (Tex. App. 2004) (holding that TDTPA claim failed because plaintiff "did not rely on [defendant's] promotional literature" but instead on another source). Accordingly, Dr. Milman has not stated a claim against Centene.

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E. Coordinated Care and Superior Are Not Centene's Alter Egos.

Finally, the Complaint fails to plausibly allege that Centene should be responsible for the claims against its subsidiaries under an alter ego theory. As is explained above, *see supra* pp. 10–14, the fact that Centene incorporates the subsidiaries' information on its tax returns or that its subsidiaries share marketing materials falls well short of providing any basis for an alter ego finding. Even at the pleading stage, Plaintiffs' allegations do not show either the unity of control or the injustice that the alter ego test requires.[1]

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[1] The alter ego tests under the law of Washington and Indiana have the same elements as the Ninth Circuit's test, requiring both total control and improper use of the corporate form. *See W. Wash. Laborers-Employers Health & Sec. Tr. Fund v. Harold Jordan Co.*, 760 P.2d 382, 386–87 (Wash. Ct. App. 1988); *Massey v. Conseco Servs., L.L.C.*, 879 N.E.2d 605, 609 & 609 n.2 (Ind. Ct. App. 2008). Texas's test is even more stringent, requiring actual fraud. *See* Tex. Bus. Orgs. Code Ann. § 21.223(b) (West 2017).

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CONCLUSION

For the foregoing reasons, the Complaint against Centene should be dismissed.

Dated: March 12, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

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