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UNITED STATES DISTRICT COURT FOR THE
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

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

DATE:	November 20, 2018
TIME:	10:00 a.m.
LOCATION:	Spokane

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I. INTRODUCTION

Defendants have previously briefed dismissal motions twice in this case. Both times, Plaintiff has taken a careful look at the criticisms levied against her complaint and amended accordingly, resulting in the dismissal of some defendants and claims and significant honing of the remaining claims aimed at redressing the injuries she suffered when she purchased health insurance that did not cover what it purported to cover. Plaintiff's complaint now focuses on just two claims and two defendants, and those claims are supported by substantial factual allegations.

Defendants Centene Management Company and Coordinated Care now ask the Court to dismiss Plaintiff's Second Amended Complaint under several newly minted and reworked theories. For the reasons stated below, none of Defendants' current theories supports dismissal of this action. Thus, Plaintiff asks the Court to deny Defendants' motion. In the alternative, because it is a key issue raised by Defendants and due to limited law on the subject, Plaintiff requests that the Court certify to the Washington Supreme Court the question of whether the Washington filed-rate doctrine applies to the claims asserted by Plaintiff.

II. STATEMENT OF FACTS

A. Plaintiff's factual allegations.

This case is about a health insurance company failing to provide coverage to its customers commensurate with the coverage advertised, contracted for, and

required by state and federal law. Defendants engaged in a classic bait-and-switch, enticing customers with the promise of good health coverage — including nonexistent physician networks — but providing woefully little coverage after they signed up. Second Amended Complaint ("SAC") ¶¶ 9-11. Defendants Coordinated Care ("Coordinated") and Centene Management Company ("CMC") effectuated this deception by offering a "family" of health plans on the Washington health care exchange under the name of Ambetter. *Id*. ¶¶ 25-28. Defendants engaged in a wide variety of misconduct, including (1) misrepresenting who was in the Ambetter provider network to make prospective insureds think many more quality providers were in the network than was actually the case, (2) routinely denying coverage for necessary health care for "insufficient diagnostic" evidence when adequate evidence existed, and (3) failing to provide medically necessary care on a reasonable basis, including by denying claims by out-of-network providers when no in-network provider was reasonably available. *Id.* ¶¶ 42-58.

Coordinated and CMC operate in concert. Coordinated pays a "management fee" to CMC and in return CMC "provides the services necessary to manage the business operations" of Coordinated. *Id.* ¶ 2. The services CMC provides are comprehensive; CMC runs all aspects of Coordinated's operations. For example, CMC plans and develops Coordinated's insurance program; provides management information systems; provides financial information systems and services; handles

all claims administrations; maintains provider and enrollee services and records; provides case management; coordinates the care provided; handles utilization and peer review; and manages the "quality assurance" and "quality improvement" aspects of Coordinated's network. *Id.*

Defendants' unlawful conduct has impacted numerous consumers. The Washington State Office of the Insurance Commissioner ("OIC") received so many consumer complaints about Coordinated that it initiated an investigation and found that Coordinated failed to monitor its network of providers, failed to report its inadequate network to the OIC, and failed to take measures to ensure that consumers received access to healthcare providers. *Id.* ¶ 16. The OIC fined Coordinated $1.5 million with $1 million suspended pending no further violations over the next two years. *Id.* ¶ 18; *see also* Declaration of Beth E. Terrell, Ex. 1.

B. Procedural history.

Plaintiff originally filed this proposed class action case on January 11, 2018 against Centene Corporation, Coordinated Care, and Superior Healthplan. *See* Complaint, Dkt. No. 1. The original defendants moved to dismiss portions of the complaint on a variety of grounds. *See* Dkt. Nos. 16, 17, & 18. After full briefing on the issues raised in those motions, Plaintiff agreed to dismiss certain claims and sought leave to amend her complaint to narrow the claims, classes, and parties involved in the case. *See* Dkt. No. 37. The Court granted that motion, and Plaintiff

filed her First Amended Complaint ("FAC"), which dropped one of the original named plaintiffs, dropped claims against Superior Healthplan, dropped all claims under the Affordable Care Act and under Texas law, and substituted Centene Management Company, LLC, which operates as the "Centene" presence in the State of Washington, for Centene Corporation. *See* Dkt. Nos. 39 & 40.

Defendants then filed a motion to dismiss the FAC, raising for the first time arguments relating to the filed-rate doctrine. *See* Dkt. No. 44. The parties stipulated to Plaintiff filing a Second Amended Complaint ("SAC") aimed at clarifying Plaintiff's allegations in light of Defendants' new arguments. *See* Dkt. Nos. 47 & 48. The SAC specifically clarifies that Plaintiff and the Class are not challenging the reasonableness of the rates filed with the OIC. SAC ¶ 14. Plaintiff instead alleges that Defendants misrepresented and made material omissions regarding the coverage provided by the Ambetter policy, which did not deliver the insurance services for which the OIC approved its filed rates. Defendants breached their contracts with Plaintiff and the Class by failing to deliver the services promised and engaged in unfair and deceptive practices by misrepresenting and making material omissions regarding the true scope of the Ambetter insurance policy. *Id.* Plaintiff also clarified the relief she seeks, including (1) "Benefit of the Bargain" damages equal to a refund of the entire premium for the purchase of insurance that was not as represented and contracted for; (2) a "Partial Refund" equal to the

difference in value between the value of the policy as represented and contracted for and the value of the policy as actually accepted and delivered; or (3) Out-Of-Pocket Expenses equal to damages incurred as a result of having to pay for services that should have been covered. SAC ¶¶ 76, 85. Defendants have now filed a motion to dismiss the SAC. *See* Dkt. No. 50.

III. AUTHORITY AND ARGUMENT

A. The Washington filed-rate doctrine does not preclude Plaintiff's claims.

Defendants maintain that the filed-rate doctrine precludes Plaintiff's claims. But the Washington Supreme Court has limited Washington's filed-rate doctrine to cases where a consumer attacks the filed rates directly and has cautioned that the filed-rate doctrine should not ordinarily bar Consumer Protection Act claims like those asserted here. For these reasons, Defendants' filed-rate argument fails.

1. The federal filed-rate doctrine does not apply to rates approved by state agencies.

The filed-rate doctrine is a federal common law rule barring suits challenging the reasonableness of rates filed with federal agencies. *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156 (1922) (creating the filed-rate doctrine). The federal filed-rate doctrine applies only to rates set by federal agencies. *See E. & J. Gallo Winery v. EnCana Corp.*, 503 F.3d 1027, 1033 (9th Cir. 2007) ("The filed-rate doctrine and associated principles of federal preemption bar challenges under state law and federal antitrust laws to rates set by federal agencies.")

(citations omitted and emphasis added); *Miletak v. Allstate Ins. Co.*, No. C 06-03778 JW, 2010 WL 809579, at *4 (N.D. Cal. Mar. 5, 2010) ("The [filed-rate] doctrine does not apply to a situation, as here, involving potential interference with rates set by a state agency rather than a federal agency.").

Thus, the only possible bar to Plaintiff's claims under the filed-rate doctrine is under the Washington state doctrine, since the "rates" at issue in this case were approved by the Washington OIC. The federal filed-rate doctrine does not apply.

2. The Washington filed-rate doctrine is narrow and does not bar Plaintiff's claims.

Washington courts have long applied the federal filed-rate doctrine to bar claims challenging rates set by federal agencies. *See, e.g., Tenore v. AT&T Wireless Servs.*, 962 P.2d 104, 108-110 (Wash. 1998) (affirming dismissal of claims that challenged rates set by the FCC pursuant to filed-rate doctrine). But until 2015, the Washington Supreme Court had not weighed in on the applicability of the filed-rate doctrine to challenges involving rates set by state agencies.[1] In

[1] Some states within the Ninth Circuit have declined to adopt or apply any filed-rate doctrine to rates approved by state agencies. *See, e.g., Williams v. Union Fid. Life Ins. Co.*, 123 P.3d 213, 219 (Mont. 2005) ("[W]e hold that the filed rate doctrine is not applicable in this case" involving state regulatory authority.); *Dreyer v. Portland Gen. Elec. Co.*, 142 P.3d 1010, 1014 n.10 (Or. 2006) ("No

2015, the Washington Supreme Court implicitly adopted a state filed-rate doctrine for the first time. *McCarthy Fin., Inc. v. Premera*, 347 P.3d 872 (Wash. 2015). The court ruled the doctrine barred policyholders' Consumer Protection Act claims in that case because the way the facts and damages were pled led the court to conclude that "to award either of the specific damages requested by the Policyholders a court would need to reevaluate rates approved by the OIC." *Id.* at 876.

Contrary to the Defendants' characterization of *McCarthy*, the decision did not categorically bar all CPA claims in the future. *See Alpert v. Nationstar Mortg. LLC*, 243 F. Supp. 3d 1176, 1182 (W.D. Wash. 2017) ("Washington's filed rate doctrine is limited with regard to Consumer Protection Act (CPA) claims."). In fact, the Washington Supreme Court held that "[i]n most cases, courts must consider CPA claims even when the requested damages are related to agency-approved rates" because "the legislature has directed that the CPA be liberally construed." *McCarthy*, 347 P.3d at 875 (emphasis added). "The mere fact that a claim is related to an agency-approved rate is no bar" to claims under the Consumer Protection Act where "claimants can prove damages without attacking

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Oregon court has expressly decided whether Oregon accepts the filed-rate doctrine."). Thus, the Court should not presume the starting point for determining the contours of Washington's filed-rate doctrine to be the federal doctrine.

agency-approved rates." *Id.* Plaintiffs "requesting general damages or seeking any damages that do not directly attack agency-approved rates" will not have their claims barred by the Washington filed-rate doctrine. *Id.*

Here, Plaintiff amended her complaint to set out three alternative theories of actual damages to demonstrate that her claims can be resolved without attacking the rates Defendants filed with the OIC. *See* SAC ¶¶ 76, 85. Unlike the policyholders in *McCarthy*, Plaintiff's claims and damages do not attack approved rates. Under the "Benefit of the Bargain" theory, this Court could refund the entire amount of all premiums paid in order to restore Plaintiff to her position prior to purchasing the Centene policy without reevaluating the reasonableness of the premiums. Similarly, under the "Out-of-Pocket Expenses" theory, the Court could award damages incurred as a result of having to pay for services that should have been covered according to the terms of the Centene policy without substituting its judgment for that of the OIC. Neither of these theories "directly attack[s] agency-approved rates," and accordingly, these claims are not barred by the Washington state filed-rate doctrine. *McCarthy*, 347 P.3d at 875.

Plaintiff acknowledges that her third damages theory, the "Partial Refund" theory, is a closer call and that some ambiguity may exist as to the applicability of the filed-rate doctrine to this damages theory. There is a key distinction between this case and *McCarthy*, however, that supports a finding that this case is not

barred by the filed-rate doctrine. In *McCarthy*, the plaintiffs alleged that their insurance premiums were unnecessarily high due to the insurance company's unfair and deceptive advertising and overcharges. *See id.* at 874. However, the *McCarthy* plaintiffs did not allege that the actual benefits provided by the policy itself were deficient. Thus, in *McCarthy*, the insurance benefits received by the plaintiffs were commensurate with the benefits that were part of the plans approved by the OIC. Further, the Court determined that the unfair and deceptive advertising issues raised by the plaintiffs, such as the insurance company's projected profit margin, were factors already considered by the OIC in setting the appropriate rates. *See id.* at 875. For these reasons, the *McCarthy* court determined that a challenge to the unfair advertising would require the Court to substitute its judgment for that of the OIC, since the OIC had already taken into account the relevant information in setting the rates.

In contrast, Plaintiff here acknowledges that the OIC approved the rates to be charged for Ambetter plans. *See* SAC ¶ 14. But the approved rates necessarily incorporated the benefits that Defendants deceptively represented to Plaintiff and to the OIC would be provided with such plans (such as a certain provider network and guarantees of network adequacy). *Id.* Plaintiff does not challenge the reasonableness of the OIC-approved rates with respect to the promised benefits. *Id.* But Plaintiff alleges that those promised benefits were never delivered. *Id.* Instead,

the actual health insurance that Plaintiff and thousands of other Washington residents were given was very different from that represented to (and approved by) the OIC. *Id.* In short, the OIC never approved a rate for the sorely deficient health insurance that Defendants actually delivered to Plaintiff. As a result, any determination by this Court as to a reasonable rate to charge for the deficient insurance actually delivered does not require substituting the Court's judgment for that of the OIC; the OIC never set a rate for that insurance in the first instance.[2] Thus, even under Plaintiff's "Partial Refund" theory, Plaintiff's claim survives Defendants' filed-rate doctrine challenge.

Defendants attempt to characterize Plaintiff's challenge to the services delivered as "simply two sides of the same coin," but cite for this argument only cases challenging rates set by federal agencies. *See AT&T v. Cent. Office Tel., Inc.*, 524 U.S. 214, 223 (1998) (relevant rates were set by FCC); *Brown v. MCI, WorldCom Network Servs., Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002) (same). These federal filed-rate doctrine cases are inapplicable, as is their use of the filed-rate doctrine to broadly bar suits that are merely related to agency-approved rates.

[2] One thoughtful and quite recent law review note supports the reasoning behind this distinction. *See* Kaleigh Powell, Note, *"A Nuanced Approach": How Washington Courts Should Apply the Filed Rate Doctrine*, 92 WASH. L. REV. 481, 512-18 (2017).

In light of the Washington Supreme Court's clear guidance that "[i]n most cases, courts must consider CPA claims even when the requested damages are related to agency-approved rates" because "the legislature has directed that the CPA be liberally construed," *McCarthy*, 347 P.3d at 875 (emphasis added), the Court should not bar Plaintiff's claims unless they directly attack agency-approved rates.

Finally, Defendants argue as a policy matter that because the OIC is currently reviewing the adequacy of Defendants' insurance network, Plaintiff should not be permitted to bring her claims. But the OIC's review of network adequacy will not provide any monetary relief to Plaintiff or the thousands of other Washington residents who already paid premiums for policies that included inadequate networks and paid out of pocket for services that their Ambetter policies should have covered but did not.

3. In the alternative, the Court should certify a question regarding the applicability of the Washington filed-rate doctrine to the Washington Supreme Court.

Under Washington law,

> When in the opinion of any federal court before whom a proceeding is pending, it is necessary to ascertain the local law of this state in order to dispose of such proceeding and the local law has not been clearly determined, such federal court may certify to the supreme court for answer the question of local law involved and the supreme court shall render its opinion in answer thereto.

RCW 2.60.020. The certification process serves the important judicial interests of efficiency and comity. According to the United States Supreme Court, certification

saves "time, energy, and resources and helps build a cooperative judicial federalism." *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974). In several recent instances, courts in this district have certified questions to the Washington Supreme Court, resulting in clarity regarding important questions of Washington law. *See, e.g.*, *Thornell v. Seattle Serv. Bureau, Inc.*, 363 P.3d 587 (Wash. 2015) (on certified questions from No. C14-1601 MJP, 2015 WL 1000426 (W.D. Wash. Mar. 6, 2015)); *Demetrio v. Sakuma Bros. Farms, Inc.*, 355 P.3d 258 (Wash. 2015) (on certified questions from No. 2:13-cv-01918-MJP, ECF Dkt. No. 42 (W.D. Wash. Oct. 10, 2014)).

Here, Plaintiff believes all three of her damages theories survive Defendants' filed-rate doctrine challenge. However, Plaintiff acknowledges that Washington law on the filed-rate doctrine is limited and that it may not be clear how to properly apply the Washington Supreme Court's ruling in *McCarthy* to Plaintiff's CPA claim in this case. Thus, if the Court is uncertain regarding the outcome of this case under Washington law, it is appropriate to certify a question regarding the applicability of the Washington filed-rate doctrine to Plaintiff's claims in this case to the Washington Supreme Court. In the event the Court decides to certify this issue, the Second Amended Complaint sets out clear alternative theories of damages so that the Washington Supreme Court can provide clear guidance as to what damages are permissible under Washington's filed-rate doctrine.

B. Plaintiff adequately alleges breach of contract.

Contrary to Defendants' arguments, the SAC provides Defendants with fair notice of Plaintiff's contract claim. Defendants' alleged violations of Plaintiff's rights under the insurance policies, including her right to a current list of network providers, her right to adequate access to medical practitioners and treatments or services, and her right to medically necessary urgent and emergency services 24 hours a day, are detailed throughout the SAC. Plaintiff describes how Defendants failed to provide her with the care and coverage she is entitled to under her policy. SAC ¶¶ 53-56. Indeed, Coordinated's consent order with the OIC refers to many of the same improper actions Plaintiff alleges here. *See* Terrell Decl., Ex. 1, Basis ¶ 3 (finding "sufficient evidence to indicate that [Coordinated] failed to monitor its network of providers"), Basis ¶ 5 (finding that Coordinated "had an insufficient network of providers in a number of its service areas"). The argument that Defendants do not understand or have notice of the claim verges on disingenuous.

More specifically, at this stage of the litigation, the Court "does not engage in debating the terms of the applicable contract." *See Gordon v. Impulse Mktg. Grp., Inc.*, No. CV-04-5125 (FVS), 2006 U.S. Dist. LEXIS 14658, at *14 (E.D. Wash. Mar. 9, 2006). "Rather the Court is only concerned with whether the Complaint alleges facts that, if proven, are sufficient to state a claim for relief." *Id.*; *see also Starr v. Baca*, 652 F.3d 1202, 1216-17 (9th Cir. 2011) (reversing dismissal

and stating "Rule 8(a) 'does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence' to support the allegations") (quoting *Ashcroft v. Iqbal*, 556 U.S.662, 129 S. Ct. 1937, 1951 (2009)).

As in *Gordon* and *Starr*, Plaintiff has alleged what contractual provisions Defendants have breached and claimed a loss of monetary damages as a consequence of Defendants' breaches. *See* SAC ¶¶ 67-76. Plaintiff specifically alleges that under the terms of her insurance policy, she "has a right to: (a) A current list of Network Providers, (b) Adequate access to qualified Physicians and Medical Practitioners and treatment or services …, and (c) Access Medically Necessary urgent and Emergency Services 24 hours a day and seven days a week." *Id.* ¶ 69. Plaintiff further alleges that due to "Defendants' conduct, including failing to provide accurate information regarding their provider networks, failing to provide a sufficient network of providers, denying valid claims, [and] failing to pay providers for valid claims," Defendants breached their contracts with Plaintiff and members of the Class. *Id.* ¶ 75; *see also id.* ¶¶ 42-58 (detailed factual allegations regarding how Defendants failed to provide the promised benefits and services). In short, Plaintiff alleges that she was entitled to certain benefits under her insurance contract, that she paid the premiums for those benefits, and that

Defendants failed to deliver the promised benefits. For this reason, Plaintiff's contract claim is properly pled.

Defendants further argue that Plaintiff's damages theories are inadequately pled, but Defendants are wrong. Under Washington law, it is sufficient for purposes of pleadings to allege that "the breach [of contract] caused plaintiff damages." *Carnahan v. Alpha Epsilon Pi Fraternity, Inc.*, No. C17-86RSL, 2017 WL 5629502, at *3 (W.D. Wash. Nov. 22, 2017) (finding plaintiff's contract claim sufficiently pled with allegation that plaintiff suffered injury as a result of defendant's breach and requesting "contract damages including consequential damages"); *see also Hart v. CF Arcis VII LLC*, No. C17-1932RSM, 2018 WL 3656300, at *6 (W.D. Wash. Aug. 2, 2018) (finding contract damages sufficiently pled where plaintiffs "alleged money damages, even if the amount of such damages i[s] uncertain at this time"). Here, Plaintiff has alleged that she suffered economic losses by incurring charges for treatment that should have been covered (SAC ¶¶ 54-55) and by paying premiums for a promised insurance plan that was different than what Defendants delivered (SAC ¶ 73). Plaintiff further identifies her three theories of damages in this action. SAC ¶ 76. This is sufficient at the pleading stage. Thus, Defendants' motion to dismiss Plaintiff's contract claim should be denied.

C. Plaintiff has sufficiently alleged claims against Centene Management Company.

Defendants contend that Plaintiff fails to state a claim against Centene Management Company under an alter ego theory. But Plaintiff's claims against CMC survive, both because Plaintiff alleges sufficient facts to support direct liability against CMC, and because Plaintiff's alter ego theory is adequately pled.

1. Plaintiff has alleged that CMC is directly liable.

First, unacknowledged by Defendants, Plaintiff does not proceed against CMC through an alter ego theory alone. Instead, Plaintiff asserts claims directly against both Defendants. Plaintiff alleges not only an "alter ego" theory in the SAC, but also that Defendants operate "in concert" and "together in a common enterprise." SAC ¶ 2. Indeed, Plaintiff alleges that CMC "provides the services necessary to manage the business operations" of Coordinated, including "responsibility for program planning and development, management information systems, financial systems and services, claims administration, provider and enrollee services and records, case management, care coordination, utilization and peer review, and quality assurance/quality improvement." *Id.* Many of these activities are the exact activities that Plaintiff challenges. For example, Plaintiff challenges the improper denial of claims, and Plaintiff alleges that CMC is responsible for "claims administration." *Id.* ¶¶ 2, 12. Similarly, Plaintiff alleges that Defendants misrepresented provider networks, and Plaintiff alleges that CMC

is responsible for "provider and enrollee services and records." *Id.* ¶¶ 2, 10-11. Thus, Plaintiff alleges that it is CMC who participated in many of the wrongful acts alleged in this case, making it directly liable for those acts. *See State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.*, 553 P.2d 423, 439 (Wash. 1976) (holding that personal liability under the Washington Consumer Protection Act can attach to a related corporate person who participates in the wrongful conduct, even where formal veil piercing does not apply). At the pleading stage, taking all allegations as true, Plaintiff has pled a direct case against CMC, and its dismissal is improper.

2. Plaintiff has sufficiently alleged an alter ego theory against CMC.

Second, Plaintiff has adequately alleged an alter ego theory against CMC. "Washington recognizes the 'alter ego' doctrine providing that where one entity 'so dominates and controls a corporation that such corporation is the entity's alter ego, a court is justified in piercing the veil of corporate entity and holding that the corporation and private person are one and the same.'" *Rapid Settlements, Ltd.'s Application for Approval of Transfer of Structured Settlement Payments Rights*, 271 P.3d 925, 930 (Wash. App. 2012) (quoting *Standard Fire Ins. Co. v. Blakeslee*, 771 P.2d 1172, 1174 (Wash. App. 1989)).[3]

[3] Centene's lead case, *Meisel v. M&N Modern Hydraulic Press Co.*, 645 P.2d 689 (Wash. 1982) (en banc), is a corporate successor liability case. What is at issue in this case is a different form of "alter ego" – the situation where two related

Defendants' misuse of the corporate form in this respect is adequately pled. Coordinated is alleged to be merely a shell and alter ego of its related and corporate entity CMC so that "[t]o all intents and purposes the activities of Coordinated [] have been abdicated to [CMC]." SAC ¶ 2. In other words, CMC dominates and controls Coordinated's insurance business. Plaintiff does not rely on this bare allegation, however. The SAC includes part of Coordinated's Washington statutory insurance filing describing how all operating activities of Coordinated are handled by CMC. *Id.* That filing does far more than cover some bland "management services" -- what CMC handles is materially *all* operating activities of Coordinated. As detailed above, CMC handles Coordinated's "program planning and development, management information services, financial systems and services, claims administration, provider and enrollee services and records, case management, care coordination, utilization and peer review, and quality assurance/quality improvement." SAC ¶ 2. CMC is further listed as providing not only "data and claims processing" but also "general management" of Coordinated. *Id.* In other words, it runs nearly every aspect of Coordinated's insurance business.

Defendants' prior filings in this case confirm CMC's intimate involvement in running Coordinated's insurance business in Washington and demonstrate that

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corporate entities are operated with such a degree of interrelatedness and control that the separateness of a corporations has ceased to exist.

CMC is the proper "Centene" defendant for Plaintiff's claims. *See, e.g.*, Dkt. No. 33, ECF p.6 (explaining that certain individuals were employees of Centene Management Company, not Centene Corporation); Dkt. No. 33-1, ¶¶ 6, 8 ("[T]he individuals whose names appear on the documents (Terri Soliz and Jodi Logue) are not employees of Centene Corporation. They both perform work for Coordinated Care Corporation, contracted through Centene Management Company, LLC, in Coordinated Care's Grievance and Appeals team in Tacoma, Washington."; "Kim Burson was not a Centene Corporation employee. She performed work for Coordinated Care Corporation, contracted through Centene Management Company, LLC, in Coordinated Care's office in Tacoma, Washington.").

Until Plaintiff obtains discovery regarding the details of the corporate relationship between Coordinated and CMC, Plaintiff cannot possibly be expected to know all of the ways in which the two corporate entities interacted, comingled, or disregarded the corporate form. As a result, it is appropriate to await summary judgment or trial to determine whether alter ego liability should attach. *See, e.g.*, *Grayson v. Nordic Constr. Co.*, 599 P.2d 1271, 1272 (Wash. 1979) (making alter ego determination on the merits after discovery). Plaintiff seeks to end the injustice imposed on all Washington Ambetter policyholders caused by Defendants' practices, whether those practices are properly attributed to Coordinated, to CMC, or to both together. Plaintiff proceeds on an alternative alter ego theory to avoid a

finger-pointing situation, where the entity on whom Plaintiff seeks to pin liability defends by simply pointing to the other as the true "bad actor." *See Landstar Inway Inc. v. Samrow*, 325 P.3d 327, 339 (Wash. App. 2014) (focus in determining "whether disregard of the corporate form is necessary to avoid injustice" is "on the nexus between the abuse of the corporate form and the injury the plaintiff claims").

D. Plaintiff requests leave to amend to address any deficiencies identified by the Court.

Should the Court determine that Plaintiff's claims are insufficiently pled, Plaintiff respectfully requests leave to amend. Plaintiff's prior amendments were made in response to different arguments raised by Defendants and were designed to address those particular issues. Thus, Plaintiff requests that any dismissal of claims be made without prejudice to Plaintiff amending her complaint to allege additional facts to address any deficiencies identified by the Court. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend should be freely given and denial of such leave without justification is an abuse of discretion).

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court deny Defendants' Motion to Dismiss the Second Amended Complaint. In the alternative, Plaintiff requests the Court certify a question regarding the Washington filed-rate doctrine to the Washington Supreme Court.

RESPECTFULLY SUBMITTED AND DATED this 11th day of October, 2018.

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on October 11, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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