No. 20-80005

In the United States Court of Appeals for the Ninth Circuit

RACHEL CONDRY, JANCE HOY, CHRISTINE ENDICOTT, LAURA BISHOP, FELICITY BARBER, and RACHEL CARROLL,

on behalf of themselves and all others similarly situated,

Plaintiffs and Petitioners,

vs.

UNITEDHEALTH GROUP INC.; UNITEDHEALTHCARE, INC.; UNITED HEALTHCARE INSURANCE COMPANY; UNITEDHEALTHCARE SERVICES, INC.; and UMR, INC.,

Defendants and Respondents.

ANSWER TO RULE 23(f) PETITION FOR PERMISSION TO APPEAL

On Petition From an Order Entered by the United States District Court for the Northern District of California, Case No. 3:17-cv-00183-VC (Honorable Vince Chhabria), Denying in Part Plaintiffs' Motion for Class Certification

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendants and Respondents UnitedHealth Group Incorporated, UnitedHealthcare, Inc., UnitedHealthcare Insurance Company, United HealthCare Services, Inc., and UMR, Inc. state as follows for their Corporate Disclosure Statement:

1. UnitedHealth Group Incorporated has no parent corporation. No publicly held corporation owns 10% or more of UnitedHealth Group Incorporated's stock.

2. UnitedHealthcare, Inc. is a wholly owned subsidiary of United HealthCare Services, Inc., which is a wholly owned subsidiary of UnitedHealth Group Incorporated.

3. UnitedHealthcare Insurance Company is a wholly owned subsidiary of UHIC Holdings, Inc., which is a wholly owned subsidiary of United HealthCare Services, Inc., which is a wholly owned subsidiary of UnitedHealth Group Incorporated.

4. United HealthCare Services, Inc. is a wholly owned subsidiary of UnitedHealth Group Incorporated.

5. UMR, Inc. is a wholly owned subsidiary of United

HealthCare Services, Inc., which is a wholly owned subsidiary of UnitedHealth Group Incorporated.

DATED: January 16, 2020

REED SMITH LLP

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I. INTRODUCTION

The plaintiffs' petition presents an unfounded request for review of the portion of the district court's class certification denial order that was correct and presents no issue worthy of review.

On two occasions in the district court, the plaintiffs sought certification of nationwide, multi-year classes of present and former UnitedHealthcare ("United") members who allegedly did not obtain full coverage for lactation services under the Affordable Care Act (the "ACA"). But under the ACA, each class member's claim turns on whether an in-network lactation service was available to that member, and why any class member's claim was not covered in full. The district court could not adjudicate these claims on a class-wide basis, so it could not certify any classes consistent with Rule 23.

Specifically, under the ACA, health plans must cover lactation support services without cost-shares (*i.e.*, deductibles, copayments, coinsurance) when a plan member obtains them from an in-network provider. Plans may, however, impose cost-shares on, or deny coverage for, out-of-network services so long as the member had a network provider available. These requirements mandate an individualized

inquiry into the particular facts that show why any given class member's claim for coverage was denied or had a cost-share imposed.

In its summary judgment ruling, the district court analyzed the ACA's requirements, conducted the required individualized inquiry, and reached different outcomes based on the facts pertaining to each named plaintiff. The ruling shows how individual issues permeate the required analysis. The district court came to that exact conclusion in denying the plaintiffs' original motion for class certification.

Nevertheless, the plaintiffs' second attempt to obtain certification of a class urged the district court to focus solely on what they contended were uniform policies pertaining to coverage for out-of-network lactation services. Consistent with its individualized summary judgment analysis, the district court correctly determined that the evidence undermined the plaintiffs' assertions of uniform policies. The evidence showed that the vast majority of women who submitted claims for lactation services received the services in-network, and that members were able to obtain in-network coverage for out-of-network services when appropriate. The wide availability of network providers, and the availability of in-network coverage for out-of-network care, undermined the plaintiffs' assertion

that the district court could simply presume, without conducting the required individual inquiry, that all women who obtained out-of-network services and did not obtain coverage had suffered a violation of the ACA. Rather, the applicable law and known facts required an individualized inquiry into why each putative class member sought services out-of-network and why coverage was denied, precluding certification of a putative class.

The petition ignores the district court's repeated observations that the ACA claims at issue require an individualized inquiry to resolve and instead resorts to bare misstatements of fact and law. For example, plaintiffs falsely claim that this case involves a uniform policy to deny out-of-network lactation claims. But United's approach to coverage for lactation services complies with the ACA and has provided full coverage to the vast majority of those who sought it. The minority of instances in which claims were denied or cost-shares imposed occurred for a variety of individual reasons, which can only be identified through individualized inquiries. Equally unavailing are the plaintiffs' efforts to portray the district court's ruling as inconsistent with Ninth Circuit law and to undercut the district court's rock-solid Article III standing

analysis. Contrary to the plaintiffs' assertions, the district court's ruling accords with well-established law and does not deviate from this Court's precedents. That plaintiffs rely on misstatements of the facts and law, rather than any sound basis for Rule 23(f) review of the portion of the order that they challenge, only further demonstrates the meritless nature of the petition. As discussed more fully below, the Court should deny review.

II. STATEMENT OF THE CASE

A. The ACA's Requirements.

The ACA requires health plans to cover without cost-sharing certain preventive services, including "comprehensive lactation support services," such as "counseling" and "education" during the antenatal, perinatal, and postpartum period. 42 U.S.C. § 300gg-13(a)(4); HRSA Guidelines, https://www.hrsa.gov/womens-guidelines-2019. The ACA and HRSA do not elaborate as to what constitutes "comprehensive lactation support services" beyond "counseling" and "education."

Health plans have discretion to adopt billing codes that pay at no cost-share for lactation services and to use "reasonable medical management techniques to determine the frequency, method, treatment,

or setting" for coverage. 29 C.F.R. § 2590.715-2713(a)(4). Health plans also may deny coverage for, or impose cost-shares on, services rendered by out-of-network providers, so long as those health plans have in-network providers who offer the services. 29 C.F.R. § 2590.715-2713(a)(3)(i)-(ii). Only when a plan does not have in-network providers must the plan cover out-of-network care without cost-shares. *Id.*

B. The *Condry* Litigation and Summary Judgment Ruling.

Plaintiffs Condry, Hoy, Endicott, Bishop, Barber, and Carroll (collectively, "Plaintiffs") are current or former members or beneficiaries of health plans administered by United who contend United violated the ACA when it denied coverage for, or imposed cost-shares on, out-of-network lactation services.[1] (*See, e.g.*, Dkt. 78, 2d Am. Compl., ¶ 212.)

After the district court dismissed some claims at the pleading stage, the district court ruled on the parties' cross-motions for summary judgment. It assessed the circumstances of each named Plaintiff, analyzing factors such as whether each Plaintiff attempted to locate in-

[1] Plaintiffs also assert that United deprived them of a full and fair review under ERISA. (*See* Dkt. 78, 2d Am. Compl., ¶ 207.) In the same ruling at issue in this petition, the district court certified a putative class on that claim, and United has sought review of that portion of the ruling in a Rule 23(f) petition filed on January 6, 2020. *See* Case No. 20-80006.

network providers, whether "nearby" providers were available, and the nature and extent of each named Plaintiff's contacts with customer service. (Dkt. 146, Summ. J. Order, at 3-5.) Based on this individualized analysis, the district court granted summary judgment in Hoy's and Bishop's favor; granted summary judgment in favor of United with respect to Barber and Condry; and denied summary judgment with respect to Endicott and Carroll.[2] (*Id.*)

C. The Original Class Certification Ruling.

Plaintiffs subsequently moved for class certification. (Dkt. 161, Original Cert Mot.) The district court denied that motion without prejudice on May 23, 2019. (Dkt. 213, Original Class Order.)

As the district court explained, the classes consisted of "all people denied lactation coverage … whether in-network or out-of-network." (*Id.* at 2.) This was problematic, because "[n]o evidence was presented … to suggest that the claim of a person … for out-of-network services is similar to the claim of a person who was denied coverage in-network." (*Id.* at 3.) Even limiting the classes to out-of-network claimants, there

[2] The only other federal court to consider similar ACA claims at summary judgment employed a similarly individualized analysis. *See York v. Wellmark, Inc.*, No. 4:16-cv-00627, 2019 WL 1493715, at *4-6 (S.D. Iowa, Feb. 28, 2019).

was no "evidence that [United] uniformly applied an unlawful policy to out-of-network claims." (*Id.* at 3-4.) The court also observed that the Plaintiffs with active ACA claims lacked Article III standing to seek prospective relief "because they [were] no longer … plan participants." (*Id.* at 4.) Nevertheless, the court exercised "its discretion to grant the plaintiffs leave to take another shot at class certification." (*Id.* at 1, 6.) Plaintiffs had the opportunity to conduct additional discovery. (*Id.* at 6 n.2; *see also* Dkt. 218, Discovery Order.)

D. The Rulings on the Motion to Intervene and Renewed Motion for Class Certification.

1. The Intervention Ruling.

Following the district court's order denying class certification, Plaintiffs filed a motion to intervene, seeking to add Harris—a current United beneficiary—as a named Plaintiff in an effort to cure their standing deficiency. (Dkt. 221, Mot. Intervene.)

On December 19, 2019, the district court denied Plaintiffs' motion, explaining that Plaintiffs had failed to add a named Plaintiff qualified to seek prospective relief, notwithstanding repeated warnings from the court regarding that issue. (Dkt. 259, Order Denying Mot. Intervene, at 1-2.) The court added that "the proposed complaint-in-intervention d[id]

not allege facts that would give Harris standing to seek prospective relief," because "[a]lthough she allege[d] that she was improperly denied coverage for out-of-network services and that she continues to be a … plan participant, she include[d] no allegations about the likelihood that she will need lactation services in the future." (*Id.* at 2.)

2. The Renewed Certification Ruling.

Simultaneous with their motion to intervene, Plaintiffs filed a renewed motion for class certification. (Dkt. 222, Renewed Cert. Mot.) In response to the original denial of class certification, Plaintiffs limited their proposed classes to out-of-network claimants. (*Id.* at 14-15.) Plaintiffs' primary theory was that United applied a "blanket policy" to out-of-network claims. (*Id.* at 1.)

In response, United submitted claims data and other evidence, demonstrating that thousands of members found and received lactation services from in-network providers and obtained coverage for those services without cost-shares, across markets and over time. (Dkt. 248, United's Cert. Br., at 8-9; Dkt. 231, Oct. 21, 2019 Decl. of Joao dos Santos, ¶ 9(b)-(d).) Other members unable to locate a network provider obtained in-network coverage for out-of-network services through

United's "gap exception" or appeals processes. (Dkt. 248, United's Cert. Br., at 9.) Thus, most members were aware of and able to obtain in-network lactation services without cost-shares or, at a minimum, in-network coverage for out-of-network services. (*Id.* at 15-16.) The evidence showed that each denial of, or cost-share imposed on, out-of-network claims resulted from a variety of reasons, so individual inquiries were required to assess the claims of ACA violations. (*Id.*)

In its order on Plaintiffs' renewed motion, the district court agreed. The court began by observing that "none of the named plaintiffs … has standing to seek prospective injunctive relief," leaving Plaintiffs "to seek certification of … a class consisting of all people denied coverage for out-of-network lactation services for the purpose of ordering … United … [to] reprocess their claims." (Dkt. 262 ("Dec. 23, 2019 Order"), at 3.) With respect to this reprocessing theory, however, Plaintiffs sought to include not only those "who received out-of-network … services, [and] submitted claims," but also those who "never submitted claims at all." (*Id.* at 4.) It made "no sense to include the second group … when the asserted purpose … is to obtain reprocessing of those clams." (*Id.*)

Even considering only those putative class members who

submitted out-of-network claims, Plaintiffs had "not met their burden of demonstrating that United … applied a uniform standard or practice." (*Id.*) In the court below, United "hotly contested" Plaintiffs' analysis of United's claims data (which was performed solely by Plaintiffs' counsel and unsupported by expert testimony), but even that analysis indicated that United fully paid 12% of out-of-network claims. (*Id.* at 5 & n.4.) The district court questioned how United could have applied a uniform policy to out-of-network claims when it fully paid some of them and observed that Plaintiffs had "not presented evidence that would allow the Court to reach a conclusion, or even to make an estimate." (*Id.* at 5, 8.) The court discussed potential explanations for the 12% figure and concluded that "the data and evidence … doesn't come close to proving that United … failed to comply with the ACA in a uniform way." (*Id.* at 11.) This was especially true given that Plaintiffs sought to certify a nationwide class, as "the experiences of proposed class members may have varied by plan, or by region, or both." (*Id.* at 8.)

III. THE REASONS FOR DENYING AN APPEAL

The district court's denial of Plaintiffs' renewed motion for class certification correctly determined that Plaintiffs failed to meet their

burden of proof under Rule 23. This Court grants immediate review under Rule 23(f) in "rare" cases where (1) "there is a death-knell situation … coupled with a certification decision … that is questionable," (2) "the certification decision presents an unsettled and fundamental issue of law," or (3) "the district court's class certification decision is manifestly erroneous." *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 959 (9th Cir. 2005). Plaintiffs argue that the district court's decision was manifestly erroneous. (*See* Petition at 10-20.) As discussed more fully below, Plaintiffs do not establish manifest error.[3]

A. Plaintiffs Failed to Establish Common Policies or Injuries.

As the summary judgment ruling shows, determining United's liability as to each class member would require a granular, fact-bound

[3] In the introduction of their petition, Plaintiffs also reference the death-knell justification for review, but their purely conclusory argument means that they have abandoned any challenge on this basis. (Petition at 3); *see Chamberlan*, 402 F.3d at 960 (rejecting reliance on death-knell rationale that was "conclusory and … not backed up by declarations … or other evidence"). To the extent Plaintiffs' passing reference constitutes a developed argument, this case involves a fee-shifting statute (ERISA), undercutting any claim that "the representative plaintiff's claim is too small to justify the expense of litigation." *Id.* at 958; *see also* 29 U.S.C. § 1132(g)(1). And, Plaintiffs have not shown that the district court's decision was "questionable," as discussed above. *See Chamberlan*, 402 F.3d at 952, 960 (to appeal on basis of death-knell situation, a plaintiff must identify "error in the certification order").

analysis that precludes certification of a class. (*See* Dkt. 146, Summ. J. Order, at 3-5.) Yet, Plaintiffs argue the district court should have certified a class because United applied a uniform policy of imposing cost-shares on, or denying coverage for, out-of-network claims, without considering the availability of in-network care. (Petition at 10-11.)

This is a false statement of the relevant facts and law. Plaintiffs did not meet "their burden of demonstrating that United … applied a uniform standard or practice." (Dec. 23, 2019 Order at 4.) Instead, Plaintiffs simply misstate United's policy.

In accordance with the ACA, United follows the rule that in-network services are presumptively covered, but out-of-network services are not necessarily so. *See* 29 C.F.R. § 2590.715-2713(a)(3)(i)-(ii). United thus expects its members to seek services through one of the many fully covered in-network options available, and it also has two processes (gap exceptions and appeals) through which members who are unable to find services in-network can obtain coverage for out-of-network services. It is only when a member goes out-of-network and does not follow the processes for obtaining coverage for such services that some members have suffered coverage denials. At oral argument, the district court

correctly observed that this approach tracks "the default rule under the Affordable Care Act." (Pls.' App., Ex. 1, Hr'g Tr., at 6:14-17.)

Even in the limited category of cases where a member obtains services out-of-network, Plaintiffs' own erroneous analysis of the data conceded that United fully paid at least 12% of these out-of-network lactation claims. (Dec. 23, 2019 Order at 5.) Plaintiffs do not explain how United could apply a uniform policy to out-of-network claims yet fully pay some of those claims. (*Id.* at 4); *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 355 (2011) (explaining that "[t]he only corporate policy" was the lack "of a uniform … practice").

Plaintiffs also failed to establish a common injury among class members, as they also were required to do. *See Thomasson v. GC Servs. Ltd. P'ship*, 539 Fed. App'x 809, 810 (9th Cir. 2013) (plaintiffs must submit "significant proof that the … class suffered a common injury"). As discussed, the vast majority of women who submitted claims billed in accordance with United's coding guidance received lactation services in-network and obtained coverage without cost-shares. (Dkt. 248, United's Cert. Br., at 8-9.) The court thus could not assume every denial of, or cost-share imposed on, out-of-network claims resulted from conduct that

violated the ACA. (*Id.*) Rather, individualized inquiries would be required to decide that issue. (*Id.*; Dec. 23, 2019 Order at 7-8 n.7.)

Plaintiffs also argue the district court "erroneously ruled on the merits of [United's] policy." (Petition at 11.) Wrong again. In observing that United's approach tracks "the default rule under the Affordable Care Act" (Pls.' App., Ex. 1, Hr'g Tr., at 6:14-17), the court's point simply was that United's approach did not eliminate the need for individualized inquiry in cases involving out-of-network services. (*See id.* at 88:3-6 ("where the rubber hits the road is what happened to these claims").)

Equally unpersuasive is Plaintiffs' argument that the district court's statement that "the experiences of proposed class members may have varied by plan, or by region, or both" (Dec. 23, 2019 Order at 8) is error because "the ACA is applicable to all non-grandfathered health plans." (*See* Petition at 12.) Plaintiffs misconstrue the district court's concern. While the ACA's requirements apply to all class members, the court's point was "that different approaches to ACA compliance" may have been "taken for different plans or in different regions." (Dec. 23, 2019 Order at 9.) The court was right to question whether these potentially differing approaches preclude certification of a nationwide

class.[4] *See Dukes*, 564 U.S. at 350 ("Dissimilarities within proposed classes … have the potential to impede … common answers.").

B. Denial of Certification Accords with Ninth Circuit Law.

The district court broke no new legal ground in rejecting Plaintiffs' class certification theories. Yet, Plaintiffs claim that the district court's order ran afoul of *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168 (9th Cir. 2010) and *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014). (Petition at 12.) This is another misstatement of the law.

In *Wolin*, this Court determined that class certification was appropriate in a manufacturing defect case where the defect had not manifested in a majority of the class members' vehicles. *See Wolin*, 617 F.3d at 1173. This Court explained that, under the warranty laws at issue, the existence of a defect would uniformly injure all class members, regardless of whether it ultimately manifested. *See id.* Similarly, in *Parsons*, this Court determined class certification was appropriate in a case challenging policies and practices that allegedly "expose[d] all inmates … to a substantial risk of serious harm." *See Parsons*, 754 F.3d

[4] Plaintiffs maintain their class properly included members who never submitted claims for reimbursement. (*See* Petition at 18.) But as the district court explained, that theory is nonsensical "when the asserted purpose" is to obtain a reprocessing of claims. (Dec. 23, 2019 Order at 4.)

at 676. This Court explained that, if proven on the merits, the alleged risk of harm would violate the Eighth Amendment as to all class members, regardless of individualized circumstances. *See id.*

Unlike the laws at issue in *Wolin* and *Parsons*, here the ACA requires an individualized inquiry into the facts that show why each class member's claim for coverage was denied or had a cost-share imposed. Thus, the impact of an alleged policy on any member in terms of liability, remedies, and available defenses would vary depending on each class member's circumstances and preclude a finding of class-wide injury.[5] *See Thomasson*, 539 Fed. App'x at 810 (claim "would require an individualized inquiry" into each class member's circumstances).

C. Non-Binding District Court Cases Do Not Warrant Review.

Similarly deficient is Plaintiffs' argument that the certification ruling is inconsistent with purportedly analogous district court

[5] Plaintiffs also question the district court's observation in its original class certification order that Plaintiffs failed to adequately explain "why their requested [reprocessing] remedy should be considered … under [Rule] 23(b)(1)-(2), rather than … (b)(3)." (Petition at 12 n.9; *see also* Dkt. 213, Original Cert. Order, at 5.) The district court's statement is an appropriate recognition that thinly veiled efforts to use Rule 23(b)(1) or (2) to obtain monetary relief while avoiding the express requirements of Rule 23(b)(3) are discouraged. *See Dukes*, 564 U.S. at 350; *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1193 (9th Cir. 2001).

decisions. (*See* Petition at 16-18.) Each of Plaintiffs' cited cases involved challenges to uniform policies that, under the applicable substantive law, subjected class members to the same injury. *See, e.g.*, *Trujillo v. UnitedHealth Group, Inc.*, No. ED CV 17-2547-JFW (KKx), 2019 WL 493821, at *1, 4-7 (C.D. Cal. Feb. 4, 2019) (denials of coverage for prosthetics breached the terms of the plans); *Des Roches v. Cal. Physicians' Serv.*, 320 F.R.D. 486, 497-504 (N.D. Cal. 2017) (guidelines allegedly did not "comport with general accepted standards"). These attributes allowed the district courts to certify classes on the theory that the uniform policies were unlawful on their face. *See, e.g.*, *Wit v. United Behavioral Health*, 317 F.R.D. 106, 127-29 (N.D. Cal. 2016) ("The harm alleged by Plaintiffs … is common to all of the putative class members.").

By contrast, here, the record evidence did "not demonstrate a uniform standard or practice." (Dec. 23, 2019 Order at 4 (distinguishing *Wit* and *Des Roches*).) And, even if it had, the ACA does not permit class-wide adjudication based on the face of a policy, without conducting the required individualized analysis. *See DWFII Corp. v. State Farm Mut. Auto. Ins. Co.*, 469 Fed. App'x 762, 765 (11th Cir. 2012) (even if practice was "completely prohibited … individual questions remain").

D. The District Court's Standing Analysis is Sound.

The district court also correctly ruled that the remaining Plaintiffs with active ACA claims lacked standing. To establish Article III standing to obtain prospective relief, a plaintiff must demonstrate that she is "realistically threatened by a *repetition* of the violation." *Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 2006) (emphasis in original); *see also O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974). Here, the named Plaintiffs were no longer United plan members, and, regardless, they presented no evidence regarding the extent to which they would seek coverage for lactation services in the future.[6]

Plaintiffs argue that the district court should have followed *Johnson v. Hartford Cas. Ins. Co.*, No. 15-cv-04138, 2017 WL 2224828, at *11 (N.D. Cal. May 22, 2017), in which the court found standing to seek prospective relief based on the possibility that the plaintiff would

[6] Plaintiffs attach a declaration to their petition, purporting to indicate that as of January 1, 2020, Condry is a United beneficiary. (*See* Pls.' Appendix, Ex. 4, Jan. 6, 2020 Condry Decl., ¶ 5.) In addition to being untimely, the declaration is irrelevant, as the district court granted summary judgment for United on Condry's ACA claims, precluding her from serving as a class representative. (*See* Dkt. 146, Summ J. Order, at 4.) Even setting this aside, the declaration includes no facts regarding the likelihood that Condry will seek coverage for lactation services in the future. (*See* Dkt. 259, Order Denying Mot. Intervene, at 2.)

purchase insurance from the defendant in the future. (*See* Petition at 19.) As the district court recognized here, that case is irreconcilable with longstanding precedent and, as such, provides no basis for appellate review. (*See* Dkt. 213, Original Cert. Order, at 5.)

Plaintiffs also ask this Court to exercise pendent jurisdiction over Plaintiffs' motion to intervene. (*See* Petition at 20.) But pendent jurisdiction is inappropriate here, because the district court's class certification ruling "hinges on the well known factors from Rule 23," while the district court's intervention ruling was based on considerations of diligence and prejudice. *See Poulos v. Caesars World, Inc.*, 379 F.3d 654, 670 (9th Cir. 2004) (declining to exercise pendent jurisdiction because the rulings "require[d] application of different legal standards"). Regardless, the district court acted within its discretion in determining that Plaintiffs' dilatory tactics warranted denial of intervention. *See Lindblom v. Santander Consumer USA, Inc.*, 771 Fed. App'x 454, 455 (9th Cir. 2019) ("broad discretion" to deny intervention motions).

E. If the Court Grants' Plaintiffs' Petition, It Should Grant United's Parallel Petition

Unlike the unsettled and important question of law raised by the district court's manifestly erroneous certification of an ERISA claims

review class [see United's Petition in No. 20-80006], the portion of the district court's decision that denied certification of a class on the ACA claims raises no important or unsettled issue and was manifestly correct. Accordingly, the Court should deny Plaintiffs' petition.

But if the Court grants' Plaintiffs' petition, it should also grant United's for the reasons stated in United's petition. Doing so will allow this Court to consider the ruling in its entirety on a complete record.

IV. CONCLUSION

This Court should deny Plaintiffs permission to appeal from the portion of the December 23, 2019 Order that Plaintiffs challenge.

DATED: January 16, 2020

REED SMITH LLP

/s/ Raymond A. Cardozo

Attorneys for Defendants & Petitioners UnitedHealth Group Incorporated, UnitedHealthcare, Inc., UnitedHealthcare Insurance Company, United HealthCare Services, Inc., and UMR, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: January 16, 2020

/s/ Raymond A. Cardozo