IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI

SAMUEL R. CARTER, M.D., Individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No.: 23AO-CC-00118
-v-	)	Division 3
MERCY HEALTH, *et al*,	)	
Defendants.	)	

ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

This matter is before the Court on Plaintiff Samuel Carter, M.D.'s Motion for Class Certification. On April 4, 2025, Plaintiff moved to certify this case as a class action pursuant to Missouri Rules 52.08(a) and 52.08(b)(3). On May 16, 2025, the Mercy Defendants[1] filed their Opposition to Plaintiff's motion and on May 29, 2025, Plaintiff filed his Reply. On June 4, 2025, the Court held a hearing on Plaintiff's motion and further considered Plaintiff's allegations and evidence and the parties' arguments.

Having considered the record, including the pleadings and the parties' suggestions, arguments and the materials and exhibits submitted to the Court, for the reasons set forth below and in accordance with the applicable standard of review, the Court finds that Plaintiff has satisfied the requirements of Rule 52.08(a) and Rule 52.08(b)(3) and therefore **GRANTS** Plaintiff's Motion for Class Certification.

[1] "Mercy Defendants" refers to collectively to all Defendants: Mercy Health; Mercy Network, LLC; MHM Support Services; Mercy Health Springfield Communities; Mercy Health East Communities; and Mercy Health Southwest Missouri/Kansas Communities and Joplin, Missouri. *See* Am. Pet. ¶¶ 15, 17-18, 21.

LEGAL STANDARD

Class certification is governed by Missouri Rule of Civil Procedure 52.08. Plaintiff must satisfy the four prerequisites of Rule 52.08(a) (numerosity, commonality, typicality, and adequacy) and one of the provisions of Rule 52.08(b). Here, Plaintiff seeks to satisfy Rule 52.08(b)(3) by showing that questions of law or fact common to the members of the class predominate over questions affecting individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Mo. R. Civ. P. 52.08(b)(3).

Whether to certify a class is a procedural matter in which the sole issue is whether the plaintiff has met the requirements for a class action under Rule 52.08. *See Elsea v. U.S. Eng'g Co.,* 463 S.W.3d 409, 416 (Mo. App. 2015). Class certification does not test the merits of the case. *See Craft v. Philip Morris Cos., Inc*., 190 S.W.3d 368, 384 (Mo. App. 2005); *Plubell v. Merck & Co., Inc*., 289 S.W.3d 707, 712 (Mo. App. 2009) ("At the class certification stage, our concern is whether the plaintiffs have met the class action requirements. . . .").[2] Rather, the party seeking class certification satisfies its burden if there is evidence in the record, taken as true, which would satisfy the requirements of Rule 52.08. *See Elsea*, 463 S.W.3d at 417.

"In class certification determination[s], the named plaintiffs' allegations are accepted as true." *Elsea*, 463 S.W.3d at 413-14. Arguments that tend to negate allegations in the petition should be ignored. *See Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 227

[2] Unless otherwise noted, quotations and internal citations are omitted.

(Mo. App. 2007). "While some evidence relating to the merits may be considered in determining whether the class certification prerequisites have been met, the court must look only so far as to determine whether, given the factual setting of the case, if the plaintiff's general allegations are true, common evidence could suffice to make out a prima facie case for the class." *Elsea*, 463 S.W.3d at 414. At this stage, the Court does "not inquire whether the plaintiffs will ultimately prevail on the merits or even whether the plaintiffs have stated a cause of action." *Plubell*, 289 S.W.3d at 712. "The trial court has no authority to conduct even a preliminary inquiry into these issues." *Id*.

CLAIMS ASSERTED

Plaintiff's lawsuit alleges that the Mercy Defendants entered into agreements with non-employee physicians, including Plaintiff, to bring those physicians into the Mercy Defendants' provider network. Am. Pet. ¶¶ 24-26. Plaintiff alleges that in those agreements, the non-employed network providers ("**Network Providers**") gave the Mercy Defendants responsibility to act as their power of attorney and that the Mercy Defendants committed to, and had a fiduciary duty to, negotiate and enter into managed care contracts on behalf of and for the benefit of those Network Providers. *Id*. ¶¶ 35-36, 41. Plaintiff alleges that the Mercy Defendants used that provider network to enter into managed care contracts with third-party payors (insurers) like Humana and Aetna. *Id*. ¶¶ 26, 38 Plaintiff alleges the non-employed network physicians did their part as providers in the network and that their work and their care of their patients contributed to and is reflected in the Mercy Defendants receiving certain value-based payments (including shared savings payments, capitation payments, care coordination fees and model practice rewards payments) from

third-party payors like Humana and Aetna. *Id.* ¶¶ 32-33, 42, 45-46. Plaintiff alleges that the value-based payments attributable to Plaintiff and the other Network Providers belong to those providers, but that the Mercy Defendants kept that money, concealed their unlawful conduct, breached their contracts and fiduciary duties to Plaintiff and the Network Providers, and have been unjustly enriched. *Id*. ¶¶ 45-47, 68-69, 79-100. Plaintiff seeks to recover that money for the two proposed classes.

Plaintiff proposes certification of two classes:[3]

1. **The Humana Class**:

   All Network Providers[4] who the Mercy Defendants included as network providers in connection with the Humana managed care and value-based contracts who have a net-positive total of Humana shared savings payment amounts, care coordination fee amounts, quality payment amounts, and model practice reward program amounts attributable to them during the period from January 1, 2016 through the date of certification.

2. **The Aetna Class**:

   All Network Providers who the Mercy Defendants included as network providers in connection with the Aetna managed care and value-based contracts during the period from January 1, 2014 through 2023.

For the following claims: Count I: Breach of Contract; Count II: Breach of Fiduciary Duty; Count III: Unjust Enrichment; Count IV: Promissory Estoppel.

[3] The Mercy Defendants criticize Plaintiff for amending his class definitions, but amendments to class definitions are not uncommon, inappropriate, and do not undermine a request for class certification. *See Hope v. Nissan N. Am. Inc.*, 353 S.W.3d 68, 79 (Mo. App. 2011) ("Missouri courts consistently recognize a certified class may subsequently be modified or decertified later before a decision on the merits.") (citing cases).

[4] As used in this Order, the term "Network Providers" means the independent physicians who practice within the Mercy network but who are not Mercy employees.

In light of those class definitions and claims, the Court analyzes Plaintiff's Motion for Class Certification according to Rule 52.08 and the standard of review that requires the Court to decide whether the allegations and evidence in the record, if taken as true, satisfies the necessary requirements of Rule 52.08.

FINDINGS OF FACT[5]

Plaintiff Dr. Carter is a resident of Jasper County, Missouri, and a physician specializing in internal medicine. The Mercy Defendants are corporations that transact business in the state of Missouri. Plaintiff is an "independent" physician in the Mercy Defendants' health system, meaning he is not an employee of the Mercy Defendants. Independent physicians who are not employees of the Mercy Defendants, but who participated in the Mercy Defendants' network, enter into agreements (called Network Affiliation Agreements or "**NAAs**") with the Mercy Defendants. Under these NAAs, the physicians agree to participate in the provider network and provide such services to beneficiaries of managed care contracts negotiated and entered into by the Mercy Defendants. Plaintiff entered into such an agreement with the Mercy Defendants. The Mercy Defendants treat this pool of Network Providers (including Plaintiff) as a group/pool. The agreements between the Mercy Defendants and the Network Providers are substantially similar in all relevant, material respects, and the Mercy Defendants treat the

[5] The following facts are taken from Plaintiff's Amended Petition-Class Action and from the parties' briefs, exhibits, and information and evidence presented at the hearing on Plaintiff's motion. Only those facts necessary to resolve the pending motion are discussed below, and those facts are simplified to the extent possible. At this stage, the Court accepts Plaintiff's factual allegations and evidence as true. The following preliminary findings of fact are only for the purpose of resolving this motion.

Network Providers the same. Under the NAAs, the Mercy Defendants committed to negotiate and enter into managed care contracts with third-party payors (insurance companies like Humana and Aetna) on behalf of and for the benefit of the Network Providers, including Plaintiff. Plaintiff's NAA, like the other Network Providers' NAAs, gave the Mercy Defendants the responsibility to act as Plaintiff's "power-of-attorney" with respect to the managed care contracts. From 2014 to the present, using the Network Providers as part of the pool of physicians to provide care to Humana and Aetna beneficiaries, the Mercy Defendants entered into managed care contracts with Humana and Aetna. The Mercy Defendants signed those managed care contracts as a Physician-Hospital Organization ("PHO"). The PHO was made up of the Network Providers and the Mercy hospital (the Mercy Defendants and employed physicians).

The PHO Agreements between *Humana* and the Mercy Defendants applied uniformly to the class of Network Providers and treated those providers as a group. Similarly, the PHO Agreement between *Aetna* and the Mercy Defendants contained language stating that the programs and reimbursement provisions applied uniformly to all Network Providers. The Mercy Defendants' corporate representative confirmed that in these agreements, the Mercy Defendants agreed to treat the Network Providers similarly in all relevant, material respects. In signing the Humana and Aetna PHO Agreements, the Mercy Defendants agreed to make the provisions of their agreements with the Network Providers—*i.e.*, the NAAs—consistent with the provisions of the PHO Agreements. The PHO Agreements further state that if the Mercy Defendants failed to make the NAAs with the Network Providers consistent with the provisions of the PHO Agreements, the terms

of the PHO Agreements controlled. Further, former Humana vice president Stacy Taylor testified that is how she understood the Humana PHO Agreement. For analyzing whether this case is well suited for certification, the Court finds that Plaintiff presented evidence, under Plaintiff's theory of the case, that the terms of the PHO Agreements applied to the Network Providers.

The Humana and Aetna PHO Agreements each had "reimbursement" provisions addressing the reimbursement models and amounts that Humana and Aetna would pay for services performed by Network Providers. In addition to fee-for-service reimbursement, the Humana reimbursement provisions contained value-based reimbursement money consisting of shared savings money and care coordination fee payments. The Humana PHO Agreements also contained a Model Practice Physician Reward Program component. The cover letter Humana sent to the Mercy Defendants with the periodic Model Practice payments stated it was developed to reward primary care physicians, like Plaintiff.

Like the Humana PHO Agreements, the Aetna PHO Agreement reimbursement was more than fee-for-service and included reimbursement and other components—specifically, capitation payment and value-based/shared-saving reimbursement. The capitation addendum addressed the Network Providers and Mercy's employed physicians as a group. The Aetna contract also contained a shared savings program called the "HPN Program." Plaintiff presented evidence that the Aetna PHO Agreement treated the Network Providers as a class or "pool" in connection with this agreement. The Aetna PHO Agreement recommended that shared savings be split with the Network Providers 50/50. The Mercy Defendants disagree with Plaintiff's allegations and evidence regarding the

Aetna capitation arrangement and this particular shared-savings pool language, but the certification stage is not the time for the Court to consider such disputes and Plaintiff's allegations are to be taken as true.

Plaintiff had Humana patients assigned to him, and presented evidence that his care of those patients, as well as the care provided by the other Network Providers, contributed to the Mercy Defendants receiving value-based reimbursement payments during the class period. Plaintiff presented evidence that the Mercy Defendants received millions of dollars' worth of shared savings payments, care coordination fees, bonus payments ("**quality payments**") and model practice reward program payments[6] from Humana, and at least some of that money is attributed to Plaintiff and the Network Providers. These Humana payments are listed in the spreadsheet data produced by Humana and the Mercy Defendants to Plaintiff in this case, which Plaintiff presented to the Court at the hearing. Plaintiff also presented an email where the Mercy Defendants' corporate representative stated the Network Providers "earned" incentive payments paid by Humana. In another email discussing value-based payments, another Mercy employee acknowledged that Plaintiff and other Network Providers had "done the work yet have not been compensated," further stating that the Mercy Defendants could work with Humana to determine what "MercyHumana owes them…."

Plaintiff also had Aetna patients, and his treatment of those patients, as well as treatment provided by the other Network Providers, contributed to the Mercy Defendants

[6] These are the four payments Plaintiff included in his Humana Class definition.

receiving value-based reimbursement payments from Aetna in the class period. The Mercy Defendants' corporate representative testified that the Network Providers are included in the large payments that Aetna made to the Mercy Defendants under this risk sharing arrangement. In opposing Plaintiff's Motion for Class Certification, the Mercy Defendants stated that "the risk sharing arrangement has always been based on the aggregate level on the entire patient population included in the arrangement…." Opp'n at 16. Similarly, the Mercy Defendants' corporate representative testified that the Aetna shared-saving payments included "all independent providers that are included in the Mercy Network." Further, the Mercy Defendants' Supplemental Answers to Plaintiff's Third Set of Interrogatories set forth the payments "arising out of Mercy's value-based arrangement with Aetna and attributed to employed physicians and independent physicians collectively."

The Mercy Defendants withheld from the Network Providers the payments that the Mercy Defendants received from Humana and Aetna. The Mercy Defendants also withheld from the Network Providers information that these payments even existed. For example, Plaintiff testified that the Mercy Defendants concealed the existence of the Humana payments from him and the other Network Providers. There is no evidence in the record that the Mercy Defendants disclosed to any Network Provider the existence or amount of value-based payments made by Humana and Aetna to the Mercy Defendants.

CONCLUSIONS OF LAW

Whether an action should proceed as a class ultimately rests within the sound discretion of the trial court. *State ex rel. Am. Family Mut. Ins. Co. v. Clark*, 106 S.W.3d

483, 486 (Mo. banc 2003). "A court abuses its discretion only if its ruling is so arbitrary and unreasonable as to shock one's sense of justice and indicate a lack of careful consideration." *Koger v. Hartford Life Ins. Co.*, 28 S.W.3d 405, 410 (Mo. App. 2000). In exercising this discretion, the Supreme Court of Missouri has emphasized that "courts should err in close cases in favor of certification because the class can be modified as the case progresses." *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 600 (Mo. banc 2012); *see also Frank v. Enviro-Tech Servs.*, 577 S.W.3d 163, 167 (Mo. App. 2019) ("In determining whether to certify a proposed class, 'a court should err in favor of, and not against, allowing maintenance of the class action' because 'class certification is subject to later modification.'"); *Plubell*, 289 S.W.3d at 712 ("[B]ecause class certification may be modified or even terminated before a decision on the merits, we err on the side of allowing the action.").

A. Requirements Under Rule 52.08(a)

1. Class Definitions and Ascertainability

The Court must determine whether the classes are capable of legal definition. Plaintiff seeks certification of a Humana Class and an Aetna Class as defined above. The Mercy Defendants argue the definitions are improper because (1) they are amorphous, vague and indeterminate such that class membership is not presently ascertainable; (2) they rely on subjective, not objective criteria, and (3) they depend on merit determinations of a key liability issue in this case. The Court disagrees.

"The class definition must be sufficiently definite so that it is administratively feasible to identify members of the class." *State ex rel. Coca-Cola Co. v. Nixon*, 249

S.W.3d 855, 862 (Mo. banc 2008). "However, the class 'need not be so ascertainable from the definition that every potential member can be identified at the commencement of the action.'" *Craft*, 190 S.W.3d at 387–88. Further, the class definition can be modified after certification, if needed. *Hope*, 353 S.W.3d at 79 ("Missouri courts consistently recognize a certified class may subsequently be modified or decertified later before a decision on the merits.") (citing cases).

i. The Humana Class

The Mercy Defendants argue that the Humana Class definition Plaintiff submitted in his motion is vague because it is not apparent what is encompassed in the term "net-positive monetary amounts." Opp'n at p. 37-38. Plaintiff disagrees, but in his Reply offered an amended definition that replaced "net-positive monetary amounts" with reference to the specific payments as to which class certification is sought: net-positive Humana shared savings payment amounts, care coordination fee amounts, quality payment amounts, and model practice reward program amounts attributable to the Network Providers during the class period. Reply at 12. Those payments are based on objective data and the terms used by the Mercy Defendants in their interrogatory answers. Plaintiff's modified Humana Class definition, therefore, cures any arguable ambiguity by separately stating the payments as to which class certification is sought. *See, e.g., Vandyne v. Allied Mortg. Capital Corp.*, 242 S.W.3d 695, 697-98 (Mo. banc 2008) ("On remand, the class definition can be cured by eliminating the phrase 'nondisclosures and false, unfair, deceptive or misleading disclosures' from the class definition.")

The Mercy Defendants next argue the phrase "attributable to them" is subjective and not presently ascertainable because, they contend, what payments are attributable to the class members impermissibly depends on the merits of the case in that a jury would first have to determine whether Network Providers did certain "work" before determining whether payments were "attributable to" them. Opp'n at p. 37-38. The Court disagrees. Plaintiff's case does not depend on reanalyzing the work done by individual Network Providers and Plaintiff has shown that no jury determination is needed to identify the class. Under Plaintiff's theory, the class is identified by looking at which Network Providers have the specific payments attributable to them according to the payment records and the Mercy Defendants' own documents and testimony. As displayed to the Court at the hearing, the Humana spreadsheets (produced by the Mercy Defendants) show specific payments attributed to the Network Providers. The Humana Class is properly defined.

ii. The Aetna Class

The Mercy Defendants argue the Aetna Class is vague, not ascertainable, and based on subjective criteria because Plaintiff has not located data that identifies which Network Providers have net-positive Aetna payments attributed to them. Opp'n at pp. 42-43. Plaintiff again disagreed, but in his Reply offered an amended definition, based on the Mercy Defendants' testimony and admissions, that removed the phrase "net-positive monetary amounts attributable to them." Under the amended Aetna Class definition, the class includes all Network Providers whom the Mercy Defendants included as network providers in connection with the Aetna managed care and value based-contracts during the class period. Plaintiff made this modification because the Mercy Defendants acknowledged

that all Network Providers are included in the payments by Aetna to the Mercy Defendants under this risk sharing arrangement. Thus, Network Providers who were in the Aetna network are the class members, and the identification of those Network Providers is based on objective data, is ascertainable, and does not depend on a merits determination. *See Dale*, 204 S.W.3d at 179–80 (Mo. App. 2006) ("even if it is determined at trial that the appellant was not liable…there would still exist two classes of individuals…, [h]ence, the class definitions do not make any merit determinations."). The Aetna Class is properly defined.

iii. Class Periods

The Mercy Defendants challenge both the start and end dates of Plaintiff's class definitions. For the end dates, they contend class definitions cannot extend to the date of trial because that phrase is vague and the class is not presently ascertainable. Opp'n at p. 44. Plaintiff's amended definitions place a specific end date on both classes, so this issue is moot and the Court finds the end dates for the classes are sufficiently definite.

For the start dates, the Mercy Defendants argue the class periods start outside the applicable statutes of limitations and so the class periods are improper. Opp'n at p. 44. Plaintiff responded that concerns about the statute of limitations are not a reason to deny certification, noting at the hearing that Plaintiff pled fraudulent concealment (Am. Pet. ¶ 69) and arguing that Defendants' desire to press such a defense actually supports certifying the classes because cases hold that Missouri's "capable of ascertainment" standard is

objective and "may be determined in a class-wide basis."[7] The Court agrees with Plaintiff and finds that the application of statutes of limitations is a merits issue and one that may be determined on a class wide basis. *See Craft*, 190 S.W.3d 368, 383 (Mo. App. 2005) ("Differences in the application of the statute of limitations to individual class members do not preclude certification.").

2. Numerosity

Under Rule 52.08(a)(1), the putative class must be "so numerous that joinder of all members is impracticable." Mo. Sup. Ct. R. 52.08(a)(1). Joinder need not be impossible, just impracticable. *See Elsea*, 463 S.W.3d at 418. Joinder of all members is "impracticable" when "it would be inefficient, costly, time-consuming and probably confusing." *Dale*, 304 S.W.3d at 167. "A plaintiff does not have to specify an exact number of class members to satisfy the numerosity prerequisite for class certification, but must show only that joinder is impracticable through some evidence *or reasonable, good faith estimate* of the number of purported class members." *Id.* (emphasis in original). Put another way, "there is no bright line test regarding the minimum number of plaintiffs needed to satisfy the numerosity requirement . . .." *Carpe v. Aquila, Inc.*, 224 F.R.D. 454, 457 (W.D. Mo. 2004). As the Missouri Court of Appeals has recognized, courts have upheld class certifications

[7] *See* Reply at p. 24 (Citing *Barfield v. Sho-Me Power Elec. Co-op.*, No. 11-CV-04321-NKL, 2013 WL 3872181, at *12 (W.D. Mo. July 25, 2013), and *In re Urethane Antitrust Litig.*, 237 F.R.D. 440, 452 (D. Kan. 2006) (noting "the common issue of concealment will predominate because the key inquiry will focus on the defendants' conduct — that is, what the defendants did — rather than on the plaintiffs' conduct")).

where the class is comprised of "100 or even less." *Dale*, 204 S.W.3d at 168 (listing cases).

Plaintiff presented evidence showing the Mercy Defendants treat the Network Providers as a class in the real world and, for the Humana Class, estimates that — based on Dr. Alan Preston's (Plaintiff's expert) preliminary damage spreadsheet and the Mercy Defendants' interrogatory answers showing millions of dollars paid — the class includes more than 100 providers. The Mercy Defendants do not challenge numerosity as to the Humana Class. The Court finds the approximate size of the Humana Class exceeds what courts find sufficient. *See Dale*, 204 S.W.3d at 168 (listing cases).

For the Aetna Class, Plaintiff presents evidence, which the Court must take as true, of Mercy's interrogatory answers reflecting the sizable amount of money paid in connection with the Aetna Class. Plaintiff also presented evidence of the Mercy Defendants' testimony that the Network Providers are included in those numbers. Plaintiff estimates that because the Humana Class has over 100 members, then the Aetna Class would have *at least* as many class members because the Aetna payments were far greater than the Humana payments. The Mercy Defendants argue Plaintiff did not provide sufficient evidence, but the Court disagrees. The evidence from the Mercy Defendants' interrogatory answers and the Mercy Defendants' testimony is sufficient support for the estimated class size. *See Dale*, 207 S.W.3d at 167 ("To support a finding of the numerosity prerequisite of Rule 52.08(a)(1), the trial court can accept 'common sense assumptions.'")

It would be impracticable to adjudicate hundreds of potential plaintiffs individually with the same or similar claims. For these reasons, the Court finds the numerosity

requirement is satisfied for both of Plaintiff's proposed classes.

3. Commonality

Commonality does not require that all class members must be identically situated. *Rentschler v. Carnahan*, 160 F.R.D. 114, 116 (E.D. Mo. 1995). Further, factual differences are not fatal to certifying a class if common questions of law or fact exist. There only needs to be a single issue common to all class members; therefore, the requirement is easily met in most cases. *Id*. at 116; *see also Crain v. Mo. State Emps. Ret. Sys.*, 613 S.W.2d 912 (Mo. App. 1981). "[I]f the same evidence will suffice for each member to make a prima facie showing as to a given question, then it is a common question." *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577, 581 (Mo. App. 2010).

Plaintiff argues common issues of law or fact exist because central, overriding common questions include:

a. Whether the Mercy Defendants were agents for the Class;
b. Whether the Mercy Defendants owed fiduciary duties, including a duty of loyalty, to the Class;
c. Whether the Mercy Defendants breached fiduciary duties to the Class;
d. Whether the Mercy Defendants used their position as agents for the Class to unjustly enrich themselves;
e. Whether the Mercy Defendants breached their contracts with and obligations to the Class; and
f. Whether the Class was injured as a result of the Mercy Defendants' unlawful conduct.

See Am. Pet. ¶ 74; Mot. at 22. The Mercy Defendants do not make a commonality argument under Rule 52.08(a), only a predominance argument under Rule 52.08(b)(3), which the Court addresses below.

The Court finds the commonality requirement satisfied for the proposed Humana and Aetna Classes. Plaintiff's theory of liability is based on common, class-wide allegations of the Mercy Defendants' agreements with and duties to the class, and the Mercy Defendants' breach of those duties to the class—all based on common conduct—which resulted in the Classes suffering economic losses from the Mercy Defendants' refusal to pay the value-based payment money to the class members. Questions regarding the Mercy Defendants' duties, breaches and liability do not require individualized evidence because those questions focus on Defendants' conduct. Common evidence of the Mercy Defendants' duties, the PHO Agreements, and the Mercy Defendants' concealment of the value-based programs from the Network Providers will establish whether or not the Mercy Defendants are liable to the class. Common evidence will determine whether Plaintiff is correct (*i.e.*, that Network Providers are entitled to the money based upon the fact the money was paid) or whether the Mercy Defendants are correct that no money is due. These questions apply to all Class members with equal force, and answering each question for one Class member will resolve it for all of them and will drive the resolution of this case. The Court finds the commonality requirement satisfied for both Classes.

4. Typicality

"Typicality means that the class members share the same interest and suffer the same injury." *Elsea*, 463 S.W.3d at 420. "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." *Hale*, 231 S.W.3d at 223. "If the claim arises from the same event or course of conduct as the class claims, and give rise to the same legal or remedial theory, factual variations in the

individual claims will not normally preclude class certification." *Hale*, 231 S.W.3d at 223 (citations omitted). "Typicality is designed to preclude class certification of actions 'involving legal or factual positions of the representative class which are markedly different from other class members.'" *Id*. (citations omitted). Typicality is satisfied "even when there is a variance in the underlying facts of the representative's claim and the putative class members' claims." *Dale*, 204 S.W.3d at 169. And, finally, "speculative variations in the class claims are not enough to defeat typicality, and the named representative does not have to show a likelihood of individual success on the merits." *Plubell*, 289 S.W.3d at 715.

Plaintiff argues that typicality is satisfied because all class members had agreements with the Mercy Defendants to be Network Providers, had value-based payments attributable to them, and were victims of the Mercy Defendants' breaches. Plaintiff argues all class members have identical theories of liability based upon the Mercy Defendants' uniform conduct towards the Network Providers. Plaintiff notes that the trial for Plaintiff would look the same as the trials for all other Class Members.

The Mercy Defendants do not contest the typicality requirement for the Humana Class. For the Aetna Class, the Mercy Defendants argue the typicality requirement is unmet because no record evidence shows he has "net-positive monetary amounts attributable to him" under the Aetna PHO Agreements. Opp'n at 67. But Plaintiff amended the Aetna Class definition to remove the phrase "net-positive monetary amounts." That phrase is substituted with the language "[a]ll Network Providers who the Mercy Defendants included as network providers in connection with the Aetna managed care and value-based

contracts." The amended Aetna Class definition is clear, fits Plaintiff's theory of the case, and is supported by the evidence presented. The Court finds Plaintiff has shown that he is a member of the proposed and amended Aetna Class. The typicality requirement is met for the Humana Class and Aetna Class.

5. Adequacy

"[D]etermining whether the adequacy prerequisite is satisfied as to a class representative, as here, the trial court must consider whether the named representative has any conflicts of interest that will 'adversely affect the interests of the class.'" *Dale*, 204 S.W.3d at 172-73. "Stated another way, the court must determine whether the class representative has 'interests antagonistic to those of the class.'" *Id*.

Plaintiff argues that he is an adequate class representative because he has no interest that is antagonistic to or that conflicts with the interests of the class. Mot. at p. 24. Plaintiff's Amended Petition states that he will prosecute that action vigorously and will fairly and adequately protect the interests of the class. Am. Pet. ¶ 76. Plaintiff seeks the same type of damages for himself and all Class Members from the same alleged misconduct by the Mercy Defendants. Am. Pet. ¶¶ 79-107. Plaintiff argues that his co-lead counsel are qualified because they have prosecuted numerous class actions recovering hundreds of millions of dollars for class members. Mot. at p. 24-25 (citing examples).

The Mercy Defendants argue that Plaintiff is an inadequate representative because Defendants believe there are several damage models that Plaintiff could choose to pursue, and each class member could be better or worse off depending on which model Plaintiff ultimately chooses. Opp'n at pp 62-64. The Mercy Defendants do not contend that

Plaintiff's co-lead counsel is not qualified, and the Court finds that they are qualified and will prosecute the interests of the class. The only disputed issue is whether Plaintiff is an adequate class representative.

Plaintiff argues that the Mercy Defendants' concerns about allegedly conflicting damage models are imaginary, and conflicts that may or may not arise based upon hypothetical differences in damage models that may or may not ever exist are speculative and do not bar certification. Reply at pp. 31-32. Plaintiff's expert emphasized that the proposed model that he will endorse will be "fundamentally fair" by "meet[ing] the elements that are already in the contract." Plaintiff's expert is "committed to looking at a model that makes sense" and would apply such a model "even if it does not result in a – as good a financial outcome for Dr. Carter."

The Court agrees with Plaintiff and finds that the Mercy Defendants' argument that conflicts could arise based on differing damage models is speculative, particularly since the Mercy Defendants do not submit any concrete examples. For the same reasons set forth in the discussion on commonality (an element the Mercy Defendants do not contest), the Court finds that Plaintiff shares a common interest with the class in pursuing the same claims and seeking a common remedy.

Finally, the Mercy Defendants have not cited any cases to support their damage model argument, and courts have rejected similar arguments based on mere speculation. *See Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753, 767 (8th Cir. 2020) ("This purported conflict is entirely speculative and is insufficient to render class certification inappropriate because it relies on nothing more than conjecture…."). As for concerns about conflicts on

damages sought for the class, *Vogt* explained that "even if there are slightly divergent theories that maximize damages for certain members of the class, 'this slight divergence is greatly outweighed by shared interests in establishing defendant's liability.'" *Id.* at 768; *see also* 1 Newberg on Class Actions § 3:62 (5th ed. 2019) ("Courts generally reject the argument that an intra-class conflict exists when divergent theories of liability would benefit different groups within the class. Courts have thus rejected challenges to the class representatives' adequacy that were based . . . on different class members desiring different methods of calculating damages[.]")

For the reasons discussed, any alleged divergence in damage theories is hypothetical and is greatly outweighed by a shared interest in establishing the Mercy Defendants' liability. The Court finds that the adequacy requirement is satisfied.

B. Requirements under Rule 52.08(b)(3)

In addition to the requirements of Rule 52.08(a), Plaintiff must establish *one of the three* requirements under Rule 52.08(b). *Dale*, 204 S.W.3d at 165. Applicable here is Rule 52.08(b)(3), which is satisfied "if the court finds that the questions of law or fact common to the members of the class predominate over questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Mo. R. Civ. P. 52.08(b)(3).

1. Predominance

"The predominance inquiry for class certification asks whether the class is seeking to remedy a common legal grievance." *Plubell*, 289 S.W.3d at 712. "'Predominance' does not require that all issues be common to the class members. Rather, it requires that common

issues substantially predominate over individual ones." *Id*. "To classify an issue as common or individual, a court looks to . . . the evidence required to show the allegations of the petition." *Id.* "If the same evidence on a given question will suffice for each class member, then it is common; if the evidence on the question varies from member to member, then it is an individual issue." *Id.* Thus, "if the same evidence will suffice for each member to make a *prima facie* showing as to a *given question*, then it is a common question." *Id*. (emphasis in original). "These common issues need not be dispositive of the case." *Id*.

"Additionally, [a] single common issue may be the overriding one thing in the litigation, despite the fact that the suit also entails numerous remaining individual questions." *Id*. (internal quotation omitted). "Consequently, predominance does not require that a single body of evidence satisfy the *prima facie* elements of [a] claim on behalf of every putative class member. Rather, it requires at least one significant fact question or issue, dispositive or not, that is common with the class's claim." *Id.*

Plaintiff relies on his allegations in the Amended Petition and the evidence above, recited in the Finding of Facts, to establish that common questions of law or fact predominate over individual questions for both the Humana and Aetna Classes. Those common overriding issues include whether the Mercy Defendants were agents for the classes, whether and what fiduciary and/or contractual duties the Mercy Defendants owed the classes, whether the Mercy Defendants breached any contractual or fiduciary duties, whether the Mercy Defendants unjustly enriched themselves, and whether the Mercy Defendants' unlawful conduct injured the Class. Mot. at pp. 26-27. Plaintiff argues these questions are answered by common proof for all class members, and proof that focuses on

Defendants' actions and failures, including admissions and testimony by the Mercy Defendants and testimony by Plaintiff's expert that apply to the classes as a whole. Mot. at pp. 3-17, 26-29. At the hearing, Plaintiff cited this evidence and explained how the proof would be the same for all class members whether the case was tried once for the class or separately for individual class members. Under Plaintiff's theory of the case, the payments by Humana and Aetna, which the Mercy Defendants' documents show are attributable to the Network Providers, are common evidence showing the work was done and that the Classes are entitled to payments.

The Mercy Defendants disagree, arguing that individualized issues undermine common questions and that Plaintiffs must prove each doctor would have agreed to and did comply with the Humana and Aetna value-based programs, and that each doctor did specific work that resulted in the payments Mercy received. Opp'n at pp. 45-62. The Court will address these arguments in the context of Plaintiff's claims and damages sought.

i. Breach of Contract (Count I), Breach of Fiduciary Duty (Count II), Unjust Enrichment (Count III), and Promissory Estoppel (Count IV)

Plaintiff's claims present common, overriding issues that are the subject of common proof. As set forth in the Findings of Fact, at this stage Plaintiff alleged and presented evidence that the NAAs that bring the Network Providers into the Mercy network are similar in all relevant and material respects. Plaintiff alleged and presented evidence applicable to all Class Members regarding each of the following propositions:

(a) that the Mercy Defendants owe the same fiduciary duties and contractual obligations to all Network Providers;

(b) that the Mercy Defendants failed to disclose and unjustly retained the value-based payments;

(c) that he and the Network Providers provided care in connection with the Humana and Aetna PHO Agreements;

(d) that the Humana and Aetna PHO Agreements contain provisions that ensure the Mercy Defendants' agreements with the Network Providers are supposed to be consistent with the terms of the PHO Agreements and ensure that the Network Providers are part of the value-based reimbursement arrangements and payments;

(e) that the Mercy Defendants failed to inform the Network Providers about the value-based arrangements in the PHO Agreements and refused to pass the value-based money paid by Humana and Aetna to the Network Providers.

"If the same evidence will suffice for each member to make a prima facie showing, then it becomes a common question." *Dale*, 204 S.W.3d at 175. Certification is appropriate where common issues include a defendant's duty, its acts and omissions and whether its duty was breached. *E.g.*, *Smith v. Am. Fam. Mutual Ins. Co.*, 289 S.W.3d 675, 688 (Mo. App. 2009) (citing *Dale*, 204 S.W.3d at 174) (refusing to decertify class in part because the predominant question was whether defendant breached its insurance contracts with its policy owners when it calculated payouts). To determine whether common issues predominate, "the fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance." *Elsea*, 463 S.W.3d at 422.

Here, Plaintiff seeks to remedy a common legal grievance and has shown that under his theory of the case, the same evidence will be used to make a prima facie case that the Mercy Defendants breached their contractual and fiduciary duties owed to the Network Providers, that the Mercy Defendants were unjustly enriched, and that the Mercy Defendants misrepresented that they would negotiate on behalf of and in the interest of the

Network Providers. Plaintiff presented allegations and evidence that in the real world, the Mercy Defendants and their network treated the Network Providers as a class or pool of providers, not individually. Plaintiff also presented allegations and evidence through NAAs, the Mercy Defendants' admissions and testimony, and the language of the PHO Agreements that all agreements with the Network Providers shall be consistent, that the questions surrounding the Mercy Defendants' duties are questions for the classes as a whole. Class certification is particularly appropriate for "[c]laims involving interpretation of form contracts," as they "often present a 'classic case for treatment as a class action.'" *State ex rel. Gen. Credit Acceptance Co. v. Vincent*, 570 S.W.3d 42, 47 (Mo. banc 2019).

In *Wright v. Country Club of St. Albans*, 269 S.W.3d 461 (Mo. App. 2008), the Court of Appeals affirmed certification of a breach of fiduciary duty claim (among other claims) where the class sought return of equity payments owed to former club members and "the same evidence [was] relied upon by each class member on the repayment of equity question." *Id*. at 467. Certification was affirmed even if "other important matters will need to be tried separately, [because] a case may proceed as a class action if one or more of the central issues are common to the class and can be said to predominate." *Id*. Here too, the same evidence will be relied upon by each class member for the claims pled. *See Hale*, 231 S.W.3d at 226 (affirming certification of unjust enrichment claim because the unjust enrichment claim "does not go to the named plaintiffs' conduct, but rather Wal-Mart's conduct"); *In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig*., 16-02709-MD-W-GAF, 2019 WL 1418292, at *19 (W.D. Mo. Mar. 21, 2019) (recognizing that

whether a benefit was unjust does not require individual inquiry where "the actions of the defendant are uniform and the transaction with all members are equitably similar.").

The Mercy Defendants argue that for Plaintiff or any class member to prevail on these claims, each will have to individually prove he or she would have agreed to bear risk, would have agreed to the terms of the value-based programs, would have to prove compliance with the value-based programs, and would have to prove what individual work each class member did that led to Humana and Aetna's payment of money to the Mercy Defendants. The Court rejects those arguments for two reasons. First, the Mercy Defendants' arguments that Plaintiffs did not comply with certain parts of the value-based programs is a merits argument and one that is at odds with Plaintiff's allegations that Plaintiff and the class fulfilled all of their obligations. Am. Pet. ¶¶ 26, 32-33.[8]

Second, the argument inaccurately describes Plaintiff's allegations and proof. When analyzing predominance "[t]o determine what evidence may be required, [the court] look[s] to the allegations of the petition." *Craft*, 190 S.W.3d at 382. The Court does not "consider what proof may be required under a cause of action the defendant thinks plaintiff should have pleaded." *Id*. In *Craft,* the defendant argued that its liability was dependent upon each consumer's individual smoking behavior. *Id*. at 382. The Court rejected that

[8] The Mercy Defendants devoted much of their briefing and oral argument to disputing Plaintiff's allegations and contesting Plaintiff's interpretation of the evidence. The merits are not to be decided at this stage, so the Court does not spend time addressing them. It is error for a Court to decide the merits or draw legal conclusions relating to issues Plaintiff did not plead. *See Craft*, 190 S.W.3d at 385 (striking parts of opinion that addressed merits and allegations plaintiff did not make, as surplusage).

argument, noting that under the plaintiff's allegations, defendant's liability did not turn on each consumer's smoking habits. *Id*.

The same is true here. Plaintiff claims that that the Mercy Defendants received value-based payments from Humana and Aetna, that these payments were attributable to the Network Providers (the Classes), that the Mercy Defendants did not inform the class about these payments, and that the Mercy Defendants withheld these payments from the Classes. Under Plaintiff's theory, the Mercy Defendants' liability does not depend on the Network Providers sharing risk or the details of the care provided. Plaintiff argues "the Network Providers are entitled to that money because, in the real world, money was in fact paid to Mercy, regardless of whether Mercy now might argue certain Network Providers may or may not have performed in certain ways or met certain standards." Reply at 2.

The Court finds that common issues predominate on Counts I-IV of Plaintiff's Amended Petition because the allegations and evidence that give rise to Plaintiff's claims are the same allegations and evidence that give rise to all class members' rights of redress, and those claims do not depend on proof of individualized issues that outweigh the common issues.

ii. Damages

Proof of class-wide damages is not a prerequisite to certification. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual

class members."); *Green v. Fred Weber, Inc.*, 254 S.W.3d 874, 882 n.8 (Mo. banc 2008) ("[T]he need for inquiry as to individual damages does not preclude a finding that the common issues predominate."); *Moser v. Keller*, 303 S.W.2d 135, 151 (Mo. 1957) (fact that amount of damages may be different for each member depending on number of shares held did not preclude class certification).

Plaintiff argues he has shown he can calculate class-wide damages consistent with his theory of liability. Citing his expert's testimony, Plaintiff shows damages can be determined on a class-wide basis by looking at data already compiled and the amounts already paid to the Mercy Defendants by Humana and Aetna (which appear in Defendants' documents and interrogatory answers) and applying a common methodology to the respective class members to calculate amounts due to each class member. Plaintiff explains that these calculations will be made using the same formula and data for each class member for both Classes. As an example, Dr. Preston provided a model damage spreadsheet for the Humana class.

The Mercy Defendants disagree, arguing that the payments cannot support damages and that the fact payments were made does not mean money is due to the class or that the class performed "work." Opp'n at 57-62. At the hearing, the Mercy Defendants argued that Plaintiff's and his expert's interpretation of the Humana and Aetna payments attributable to the Network Providers is incorrect. The Mercy Defendants also criticize Plaintiff's expert for having a damage model that has not been finalized. But these are merits issues, and it "is inappropriate to resolve completing damage theories at the class certification stage." *Craft*, 190 S.W.3d at 385. Plaintiff has shown he intends to present class-wide

damages in a consistent manner using the same categories of data for all class members. While the amount of damages may vary by class member, the methodology used to calculate damages will be the same for all class members. Further, the Court agrees with Plaintiff that damage models do not need to be exact at the certification stage.[9] The Court finds common issues predominate with respect to damages.

2. Superiority

"The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of alternative available methods of adjudication." *Dale*, 204 S.W.3d at 181. When deciding if a class action is superior to other available methods of adjudication, courts consider four factors.[10] The Mercy Defendants do not make any argument contesting superiority.

Plaintiff argues class treatment is superior to individual litigation because all Class Members have identical claims against the Mercy Defendants and will use the same proof. Mot. at pp. 32-33. Plaintiff argues that Class Counsel will be able to present this case on a

[9] *See In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 325 F.R.D. 136, 173 (D.S.C. 2018) ("damages calculations made pursuant to a common methodology 'need not be exact' at the class-certification stage") (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013)).

[10] Those four factors are: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) to the extent and nature of any litigation concerning the controversy already commenced by or against the members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. *Wright*, 269 S.W.3d at 467.

class-wide basis as efficiently as a single case on an individual basis, and with substantially less expense and burden placed on this Court. Mot. at p. 33.

The Court finds a class action is a superior method for adjudicating these claims. It would be judicially inefficient for these claims to be litigated separately in individual cases, as each would present the same legal theories and evidence stemming from the same conduct by the Mercy Defendants. The Court finds the superiority requirement is satisfied.

C. Arbitration Provisions in the NAAs

Although Plaintiff's NAA does not contain any arbitration provision, the Mercy Defendants argue that if the Court certifies the Humana and Aetna Classes, it must exclude any Network Provider whose NAA contains an arbitration provision.[11]

The Mercy Defendants cite four cases to support their argument that the Court should excise these absent class members from any certified class. In two of them, the courts first certified the class actions, despite some class members having arbitration agreements, and then revisited arbitration issues post-certification when the defendants sought to remove members with binding arbitration agreements from the class. *See Eaton v. Ascent Res.-Utica, LLC*, 2:19-CV-03412, 2024 WL 1458457, at *2 (S.D. Ohio Apr. 4, 2024); *Freitas v. Cricket Wireless, LLC*, C 19-7270 WHA, 2022 WL 1082014, at * 1 (N.D. Cal. Apr. 11, 2022).

Plaintiff's Reply cites cases taking that same approach, and Plaintiff argues that numerous cases find that the correct procedure is for a class to be certified and then for the

[11] The Mercy Defendants do not argue the potential presence of arbitration agreements for some class members bars certification altogether.

defendant to advance its arbitration-related arguments by filing a motion to compel arbitration. Reply at p. 38-39. Before a class is certified, the putative class members are not parties, and numerous courts have held that courts lack authority to make rulings about the enforceability or scope of arbitration provisions between a defendant and a non-party, putative class member. *E.g., Jensen v. Cablevision Sys. Corp.*, 372 F. Supp. 3d 95, 123 (E.D.N.Y. 2019); *In re Ductile Iron Pipe Fittings Direct Purchaser Antitrust Litigation*, No. 12-CV-711, 2016 WL 5508843, at *2 (D.N.J. Sept. 28, 2016).

The Court agrees with the weight of authority and concludes that whether certain class members might be excluded should be addressed after certification. The Court will certify the Humana and Aetna classes and will not exclude any class members at this stage.

D. Notice

For classes certified under Rule 52.08(b)(3), "the court shall direct to the members of the class the best notice practicable under the circumstances…." Mo R. Civ. P. 52.08(c)(2). In accordance with the mandate to direct to class members the best practicable notice, the Court orders the parties to meet and confer to determine agreed upon proper notice procedures.

CONCLUSION

Accordingly, Plaintiff's Motion for Class Certification is **GRANTED**. The Court hereby certifies the following classes in accordance with Rule 52.08:

1. **The Humana Class**:

   All Network Providers who the Mercy Defendants included as network providers in connection with the Humana managed care and value-based contracts who have a net-positive total of Humana shared savings payment

amounts, care coordination fee amounts, quality payment amounts, and model practice reward program amounts attributable to them during the period from January 1, 2016 through the date of certification.

2. **The Aetna Class**:

   All Network Providers who the Mercy Defendants included as network providers in connection with the Aetna managed care and value-based contracts during the period from January 1, 2014 through 2023.

It is FURTHER ORDERED that:

1. The parties shall meet and confer on the proposed notice to potential class members pursuant to Missouri Rule of Civil Procedure 52.08(c)(2). The proposed notice shall be filed within twenty-one (21) calendar days of the filing of this Order.

2. Plaintiff Samuel Carter, M.D. is appointed as representative of the Humana Class and the Aetna Class.

3. The following attorneys are appointed as class counsel: Brandon Boulware and Jeremy Suhr from the law firm Boulware Law, LLC in Kansas City, Missouri; and Bryan White from the law firm White, Graham, Buckley & Carr LLC in Independence, Missouri.

IT IS SO ORDERED.

Date: July/09/2025

David B. Mouton

Hon. David B. Mouton