IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

MARTIN ZAKARIAN, and MARY JONES, on behalf of themselves and those similarly situated, Plaintiffs, v. THE RAWLINGS COMPANY LLC, RAWLINGS FINANCIAL SERVICES, LLC, and RAWLINGS & ASSOCIATES, PLLC, Defendants.	)	Case No. 24-cv-00229-SRB

ORDER

Before the Court is Plaintiff Martin Zakarian ("Mr. Zakarian") and Mary Jones's ("Ms. Jones") (collectively, "Plaintiffs") Motion for Class Certification. (Doc. #95.) For the reasons set forth below, the motion is GRANTED IN PART and DENIED IN PART. The motion is GRANTED insofar as the Court certifies Plaintiffs' proposed damages classes. The motion is DENIED insofar as the Court will not certify Plaintiffs' proposed injunctive classes.

I. BACKGROUND

The following background is taken from Plaintiffs' Class Action Complaint (Doc. #1) and from the parties' briefs and exhibits, without further citation or attribution unless otherwise noted.[1] Only those facts and issues necessary to resolve the pending motion are discussed below. Additional facts relevant to the pending motion are discussed in Section III.

Plaintiffs are and were insured through Medicare Advantage Organizations ("MAOs"). Plaintiffs were involved in separate motor vehicle accidents and suffered personal injuries.

[1] All page numbers refer to the pagination automatically generated by CM/ECF. The Court notes that both parties filed a redated version and an unredacted version of their suggestions in support and suggestions in opposition to the pending motion. (Doc. #96; Doc. #99; Doc. #105; Doc. #107.)

Plaintiffs' Medicare Advantage ("MA") plans made conditional payments to Plaintiffs' healthcare providers to cover health care related to their accidents. Plaintiffs retained counsel and settled their claims against the respective tortfeasors. Plaintiffs incurred attorneys' fees and costs (hereinafter "procurement costs") during this process.

When a MA plan makes conditional payments for health care resulting from an accident caused by a third-party, the MAO may recover such payments under the Medicare Secondary Payer Act (the "MSP Act").[2] Defendants are vendors that contract with MAOs to recover conditional Medicare payments from settlements or judgments between insureds and third-party tortfeasors. After Plaintiffs settled their claims, Plaintiffs' MAOs contracted with Defendants to recover the MAO liens related to the conditional payments made by the MAOs. Plaintiffs allege they ultimately "paid, under protest, their respective liens in full," including procurement costs. (Doc. #96, p. 9.)

Under 42 C.F.R. § 411.37, two methodologies govern how conditional payments may be recovered. First, 42 C.F.R. § 411.37(c) provides that:

> If Medicare payments are less than the judgment or settlement amount, the recovery is computed as follows:
>
> (1) Determine the ratio of the procurement costs to the total judgment or settlement payment.

[2] As explained by Defendant, the MSP Act provides that:

> when an MAO makes a payment for medical services that are the responsibility of a primary payer (e.g., other insurer or a tortfeasor), those payments are conditional, whether the primary payer's liability is established at the time of the conditional payment or later. These conditional payments are subject to recovery by Medicare when and if the other insurance does make payment. . . . In other words, under the MSP [Act], when a person (including an enrollee) receives payment for a benefit the MAO conditionally provided, the MAO can require that person to reimburse it for those conditional payments. MAOs often enforce these recovery rights through subrogation and recovery agents, such as" Defendants.

(Doc. #37, p. 10) (citation and quotation marks omitted). "[S]ubrogation is the principle under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy." *White Knight Diner, LLC v. Owners Ins. Co.*, 70 F.4th 453, 455 (8th Cir. 2023) (quoting Black's Law Dictionary (11th ed. 2019)).

(2) Apply the ratio to the Medicare payment. The product is the Medicare share of procurement costs.

Second, 42 C.F.R. § 411.37(d) provides that "[i]f Medicare payments equal or exceed the judgment or settlement amount, the recovery amount is the total judgment or settlement payment minus the total procurement costs."

In this case, Plaintiffs allege that Defendants failed to offset procurement costs as required by 42 C.F.R. § 411.37. Plaintiffs explain that "Defendants instead followed the contract language of the respective MAO plans which purportedly except procurement cost offsets from their MAO loans." (Doc. #99, p. 9.) According to Plaintiffs, "Defendants have adopted a practice of refusing to offset procurement costs when subrogating MAO liens on behalf of their MAO clients. That practice flies in the face of the simplistic formula for calculating MAO and Medicare liens promulgated at 42 CFR § 411.37 and that is the basis for this putative class action lawsuit." (Doc. #96, p. 7.)

Plaintiffs assert two claims against Defendants: Count I—Negligence Per Se; and Count II—Breach of Contract. In part, the negligence per se claim alleges that "Defendants['] pattern and practice of not factoring in 'procurement costs' when calculating and collecting on Medicare liens is a violation of 42 CFR § 411.37." (Doc. #1, ¶ 41.) In part, the breach of contract claim alleges that "Defendants while acting as agents for Medicare breached the Plaintiffs and the members of the Kansas Class and the Missouri Class [Medicare] contracts by failing to factor in 'procurements costs' when calculating and collecting on Medicare liens." (Doc. #1, ¶ 48.)

Plaintiffs now move for class certification of two damages classes and two injunctive classes under Federal Rules of Civil Procedure 23(a) and 23(b)(3). Ms. Jones is a citizen of Missouri, and Mr. Zakarian is a citizen of Kansas. Plaintiffs define their proposed classes as follows:

Damages Classes

Ms. Jones seeks to represent the following damages class:

> All Missouri citizens, represented by counsel, who resolved any lawsuit, claim, or cause of action in their favor since January 1, 2019 where Defendants recovered a lien or subrogation interest on behalf of a Medicare Advantage Organization without reducing the amount of the lien or subrogation interest to offset for procurement costs.

Mr. Zakarian seeks to represent the following damages class:

> All Kansas citizens, represented by counsel, who resolved any lawsuit, claim, or cause of action in their favor since January 1, 2021 where Defendants recovered a lien or subrogation interest on behalf of a Medicare Advantage Organization without reducing the amount of the lien or subrogation interest to offset for procurement costs.

Injunctive Classes

Ms. Jones seeks to represent the following injunctive class:

> All Missouri citizens who hold Medicare Advantage Organization insurance policies that are assigned to Defendants for the purposes of recovering on Medicare Advantage Organization liens.

Mr. Zakarian seeks to represent the following injunctive class:

> All Kansas citizens who hold Medicare Advantage Organization insurance policies that are assigned to Defendants for the purposes of recovering on Medicare Advantage Organization liens.

(Doc. #96, pp. 11-12).[3] Defendants oppose the pending motion, and the parties' arguments are addressed below.

II. LEGAL STANDARD

Class certification is governed by Federal Rule of Civil Procedure 23. Rule 23 requires a plaintiff to demonstrate, by a preponderance of the evidence, all four requirements of Rule 23(a) and at least one of the provisions of Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33

[3] The proposed classes exclude certain individuals (e.g., court personnel) but those exclusions are not relevant to resolving the pending motion.

(2013); *Cope v. Let's Eat Out, Inc.*, 319 F.R.D. 544, 551 (W.D. Mo. 2017). "Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Instead, a plaintiff "must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* (emphasis in original).

A district court "must undertake a rigorous analysis to ensure that the requirements of Rule 23 are met." *Bennett v. Nucor Corp.*, 656 F.3d 802, 814 (8th Cir. 2011) (citation and quotation marks omitted). The Rule 23 analysis will frequently overlap to some extent with the merits of the underlying claims. *Dukes*, 564 U.S. at 351. However, "[a] court's inquiry on a motion for class certification is 'tentative,' 'preliminary,' and 'limited.'" *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 613 (8th Cir. 2011). "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013).

III. DISCUSSION

The Court must "begin by considering the nature of the plaintiffs' claim to determine whether it is suitable for class certification." *Harris v. Union Pac. R.R. Co.*, 953 F.3d 1030, 1033 (8th Cir. 2020) (citation omitted). Here, Plaintiffs seek class certification based upon the two claims asserted: negligence per se and breach of contract. Each claim is brought under both Missouri and Kansas law.

Under Missouri law, a negligence per se claim contains four elements: "(1) the defendant violated a statute or regulation; (2) the injured plaintiff was a member of the class of persons intended to be protected by the statute or regulation; (3) the injury complained of was of the kind

the statute or regulation was designed to prevent; and (4) the violation of the statute or regulation was the proximate cause of the injury." *Dibrill v. Normandy Assoc., Inc.*, 383 S.W.3d 77, 84-85 (Mo. Ct. App. 2012). Under Kansas law, a negligence per se claim has the following elements: "(1) a violation of a statute, ordinance, or regulation, and (2) the violation must be the cause of the resulting damages." *Pullen v. West*, 92 P.3d 584, 593 (Kan. 2004) (citation and quotation marks omitted). "In addition, the plaintiff must also establish that an individual right of action for injury arising out of the violation was intended by the legislature." *Id.*

Under Missouri law, a breach of contract claim has the following elements: "(1) the existence and terms of a contract; (2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff." *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 850 (8th Cir. 2014) (applying Missouri law). Under Kansas law, a breach of contract claim has the following elements: "(1) the existence of a contract between the parties; (2) sufficient consideration to support the contract; (3) the plaintiff's performance or willingness to perform in compliance with the contract; (4) the defendant's breach of the contract; and (5) damages to the plaintiff caused by the breach." *Stechschulte v. Jennings*, 298 P.3d 1083, 1098 (Kan. 2013).

Based on the elements and nature of the asserted claims, the following analyzes the motion for class certification in accordance with Rule 23.

i. Plaintiffs' Proposed Damages Classes.

The Court first analyzes whether Plaintiffs have satisfied the requirements for certification of their proposed damages classes.

A. Requirements Under Rule 23(a)

Under Rule 23(a), a proposed class must satisfy four elements: (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative party are typical of the claims or defenses of the class (typicality); and (4) the representative party will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a). Each element is addressed below.

1. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." "In determining whether the numerosity requirement is satisfied, the number of persons in a proposed class, the nature of the action, the size of the individual claims, the inconvenience of trying individual suits, and any other factor relevant to the practicability of joinder is relevant." *Emanuel v. Marsh*, 828 F.2d 438, 444 (8th Cir. 1987), *cert. granted and judgment vacated on other grounds*, 487 U.S. 1229 (1988) (citing *Paxton v. Union Nat. Bank*, 688 F.2d 552, 559–560 (8th Cir. 1982)).

Here, Plaintiffs argue that "Defendants have recovered on 823 Missouri MAO files since January 1, 2019, and 530 MAO Kansas files since January 1, 2021. Since Defendants have recovered on MAO files more than a few hundred times in each respective state, numerosity is satisfied." (Doc. #99, p. 22.) The Court agrees and finds that joining hundreds of plaintiffs would be impracticable. *See, e.g.*, *Ark. Educ. Ass'n v. Bd. Of Educ.*, 446 F.2d 763, 765 (8th Cir. 1971) (twenty class members sufficient); *Paxton*, 688 F.2d at 561 (impracticable to join some portion of the seventy plus class members).

Defendants argue that Plaintiffs' proposed damages classes are not ascertainable which is another requirement under Rule 23. *See McKeague v. TMBC, LLC*, 847 F.3d 992, 998 (8th Cir. 2017) (stating that ascertainability is an implicit requirement under Rule 23). The Court has considered but rejects those arguments. The Court agrees with Plaintiffs that the damages classes are ascertainable because those classes:

> consist[] of those MAO policy holders who had their conditional payments assigned to Rawlings for recovery and who were subject to Rawlings' policy of not applying a procurement cost offset. Rawlings admits it follows the policy of not applying a procurement cost offset to MAO liens where contract language disavows the same. Rawlings further admits that a review of its records would identify the absent class members. Thus, this case present[s] a 'classic case for treatment as a class action.'

(Doc. #117, pp. 11-12) (quoting *McKeague*, 847 F.3d 992, at 999).

Consequently, Plaintiffs have satisfied the Rule 23(a)(1) numerosity and ascertainability requirements.

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." "Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" which "does not mean merely that they have all suffered a violation of the same provision of law." *Dukes*, 564 U.S. at 349–50 (citation and quotation marks omitted). The "claims must depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. at 350. Commonality "'does not require that every question of law or fact be common to every member of the class . . . and may be satisfied, for example, where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not

identically situated.'" *Downing v. Goldman Phipps PLLC*, No. 13-206 CDP, 2015 WL 4255342, at *4 (E.D. Mo. July 14, 2015) (quoting *Paxton*, 688 F.2d at 561).

Here, the commonality requirement is satisfied. Plaintiffs have presented evidence that Defendants do not—as a matter of course—offset procurement costs as required under 42 C.F.R. § 411.37. Instead, Defendants' "subrogation analysts are trained to comply with the requirements of the relevant MA contracts, including relating to procurement costs." (Doc. #107, p. 9.) If the MAO contract does not offset procurement costs, Defendants abide by that contract instead of following the procurement cost methodology under 42 C.F.R. § 411.37.

Under these circumstances, and as explained by Plaintiffs, the "common questions arising from those common facts are . . . [1] Whether Defendants have a pattern and practice of not factoring in 'procurement costs' when calculating and collecting on Medicare liens[; and [2]] Whether Defendants' pattern and practice of not factoring in 'procurement costs' when calculating and collecting on Medicare liens is a per se violation of 42 CFR § 411.37." (Doc. #99, p. 22.) Because "there are questions of law or fact common to the class," Rule 23(a)(2) is satisfied.

Defendants argue that commonality is lacking, in part because the common questions stated above "require presentation of individualized proof and will generate individual answers based on the different MA contracts involved and the individualized recovery process for each insured." (Doc. #107, p. 16.) Defendants also identify a "non-exclusive list of member-specific questions [that] demonstrates why Plaintiffs' 'common questions' will not result in common answers." (Doc. #107, pp. 17-18.)

Upon review, Defendants' arguments do not defeat commonality. The Court agrees with Plaintiffs that "whether MAO contract language can supersede controlling federal law (i.e., 42

CFR § 411.37) is the common issue and resolution thereof will generate a common answer for the class." (Doc. #117, p. 12.) Therefore, Plaintiffs have satisfied the commonality requirement under Rule 23(a)(2).

3. Typicality

Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." "The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1174 (8th Cir. 1995) (citing *Paxton*, 688 F.2d at 562). Rule 23(a)(3) "requires a demonstration that there are other members of the class who have the same or similar grievances as the plaintiff." *Donaldson v. Pillsbury Co*., 554 F.2d 825, 830 (8th Cir. 1977). "Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996).

Here, Plaintiffs argue their claims are typical of the putative class members because they are seeking relief based on "Defendants' improper failure to offset procurement costs on MAO liens based on MAO contract language. The absent Missouri and Kansas Damages Class members have allegedly been injured in the same manner, i.e., Defendants have also not provided an offset for procurement costs based on MAO contract language." (Doc. #99, p. 23.) The Court agrees with Plaintiffs. Even if there are some factual variations, those variations do not defeat the fact that the class members have similar grievances based on the same legal theory. *Alpern*, 84 F.3d at 1540. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

Defendants' arguments to the contrary are not persuasive. Defendants argue that "[b]ased on the significant differences between Plaintiffs' claims and putative class members, including the individualized nature of the recovery process, differing contracts, and the alleged payments 'under protest,' the typicality requirement cannot be met." (Doc. #107, p. 20.) These arguments are rejected for many of the reasons stated above. The Court agrees with Plaintiffs that "[t]he contracts at issue here are common because each disavows the offset of procurement costs from MAO liens." (Doc. #117, p. 13.) Plaintiffs have "identif[ied] those MAO contracts which were assigned to Rawlings for MAO lien recovery and which expressly disavow the federally mandated procurement cost offset." (Doc. #117, p. 14.) For all these reasons, Plaintiffs have satisfied the typicality requirement under Rule 23(a)(3).

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "The focus of Rule 23(a)(4) is whether: (1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Lopez v. Tyson Foods*, No. 8:06CV459, 2008 WL 3485289, at *18 (D. Neb. Aug. 7, 2008) (quoting *Paxton*, 688 F.2d at 562). The adequacy requirement "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

Defendants argue that Mr. Zakarian and Ms. Jones are not adequate representatives. Defendants contend that both individuals displayed a lack of understanding about their claims during their depositions. Defendants further contend that Mr. Zakarian "did not appear physically or mentally well during his deposition," required frequent breaks, and "the deposition

was unilaterally terminated based on his inability to continue after less than 2.5 hours on the record." (Doc. #107, p. 21.)

Upon review, the Court rejects Defendants' arguments. Class representatives "need only have a basic understanding of the outline of the case, at least minimal interest in the action and ability to assist in litigation decisions." *In re SciMed Sec. Litig.*, Civ. No. 3–91–575, 1993 WL 616692, at *5 (D. Minn. Sep. 29, 1993). At their depositions, Mr. Zakarian and Ms. Jones testified this case is brought against Defendants for "the offset of attorney's fees" (Mr. Zakarian) and because Defendants "took too much of my money" (Ms. Jones). (Doc. #107, pp. 20, 22.) After reviewing the deposition transcripts, the Court finds the named Plaintiffs have a basic understanding of this case and can assist with litigation decisions. (Doc. #108-5; Doc. #108-6.) There is also no discernable conflict between the named Plaintiffs and the class they seek to represent. Finally, proposed class counsel have experience in complex litigation, in class actions, and are thus qualified. For these reasons, Plaintiffs have satisfied the Rule 23(a)(4) adequacy requirement.

B. Requirements Under Rule 23(b)(3)

If Rule 23(a) is satisfied, the party seeking certification "must also satisfy through evidentiary proof at least one of the provisions of Rule 23(b)." *Comcast,* 569 U.S. at 33. Plaintiffs move for class certification under Rule 23(b)(3). Federal Rule of Civil Procedure 23(b)(3) requires a finding that:

> [t]he questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> > (A) the class members' interests in individually controlling the prosecution or defense of separate actions;

> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
> (D) the likely difficulties in managing a class action.

1. Common Questions Predominate Individual Questions

"Rule 23(b)(3)'s predominance criterion is even more demanding than Rule 23(a)." *Comcast*, 569 U.S. at 34. "The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation . . . and goes to the efficiency of a class action as an alternative to individual suits." *Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 479 (8th Cir. 2016) (internal citations omitted). "What matters to class certification . . . is not the raising of common 'questions'—even in droves—but rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Dukes*, 564 U.S. 338 at 350 (citation, quotation marks, and emphasis omitted). The predominance inquiry "asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Orduno v. Pietrzak*, 932 F.3d 710, 716 (8th Cir. 2019) (citations and quotation marks omitted).

Here, the Court finds Plaintiffs have satisfied the predominance factor. As discussed above, Plaintiffs have presented evidence that would support a finding that Defendants have a policy of not offsetting procurement costs based on contract language in violation of 42 C.F.R. § 411.37. The Court agrees with Plaintiffs that "[c]lass wide adjudication of such common questions will directly resolve the underlying claims of the action, and achieve judicial economy by saving the Court the time, effort, and expense incurred by unnecessary and inefficient adjudication of individual disputes." (Doc. #99, p. 24.)

Defendants argue the damages classes should not be certified because individual questions predominate. In particular, Defendants argue the damages classes: (1) "require nearly exclusively individualized inquiries as to liability;" (2) "individualized questions based on Defendants' defenses pervade the Damages Classes;" (3) "individualized injur[ies] and damages" predominate. (Doc. #107, pp. 24-29.) These arguments are not persuasive.

With respect to liability, the Court agrees with Plaintiffs that "[t]he liability issues can—and will—be proven by answering whether, as a question of law, Rawlings may rely on MAO contract language over the applicable federal law." (Doc. #117, p. 18.) With respect to Defendants' alleged defenses, the Court agrees with Plaintiffs that Defendants "cite[] no law supporting [their] position that the procurement cost reduction in 42 CFR 411.37 is subject to unique defenses such as voluntary payment, consent, accord and satisfaction, and the like. In actuality, 42 CFR 411.37 provides the mandatory reduction of procurement costs." (Doc. #117, pp. 19-20.)

As for damages, Defendants acknowledge that "courts have sometimes certified classes where there is some individual variation in the amount of damages[.]" (Doc. #107, p. 28) (emphasis omitted). The Court agrees that if Plaintiffs establish liability, there will likely be some individualized inquiries as to damages. However, Plaintiffs have retained CPA Steve W. Browne, who has experience in damage calculation models. According to Plaintiffs, Mr. Browne "is qualified, ready, willing, and able to utilize the two methodologies in 42 C.F.R. § 411.37 to calculate the damages for the absent Missouri and Kansas Damages Class members[.]" (Doc. #99, p. 25.)

The Court thus rejects Defendants' arguments that any individual damage calculation defeats the predominance element. Even if this action "will necessitate a degree of individual

inquiries into the harm suffered by class members, common issues relating to Defendants' adoption, implementation, and enforcement of the [their alleged procurement cost policy] still predominate[.]" *Cope v. Let's Eat Out, Inc.*, 354 F. Supp. 3d 976, 991 (W.D. Mo. 2019). The Court further finds that the parties can collectively engage in discovery efforts to determine the amount of damages incurred by the members of the damages classes. For all these reasons, and the additional reasons stated by Plaintiffs, the Court finds the class members are sufficiently cohesive to warrant adjudication by class representation. Common questions of fact and law predominate over any questions affecting only individual members. The Court therefore finds that Plaintiffs have satisfied the predominance requirement.

2. Class Certification is the Superior Method to Adjudicate This Case

Under Rule 23(b)(3), a plaintiff must also demonstrate that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R .Civ. P. 23(b)(3). "In determining whether a class action is the superior vehicle for litigation, courts consider, inter alia, the difficulties likely to be encountered in the management of the action." *Barfield v. Sho-Me Power Elec. Co-op.*, No. 11-cv-04321-NKL, 2013 WL 3872181, at *12 (W.D. Mo. July 25, 2013).

Here, the Court finds that a class action is the superior method of adjudication. In particular, the Court does not anticipate "any material difficulties encountered in managing this action as a class action; the elements of each claim (noted above) make common evidence the easiest method to prove (or, for Defendants, attempt to disprove) Plaintiffs' allegations." (Doc. #99, p. 27.) Relatedly, and for the reasons discussed above, the Court rejects Defendants' arguments that a class action is not superior because of "individualized issues." (Doc. #107, p. 32.) Because each potential class member's conduct does not predominate over common

questions, "[c]ertification will not generate any complexities from a case management perspective." *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 624 (C.D. Cal. Nov. 16, 2015) (citation and quotation marks omitted).

For these reasons, and the additional reasons stated by Plaintiffs, Rule 23(b)(3) is satisfied.

C. Notice Requirements Under Rule 23(c)(2)(B)

For classes certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Plaintiffs state they will consult with Defendants' counsel and then request Court approval of a proposed Class Notice and Notice Plan.

The Court agrees with this approach. Accordingly, the Court orders the parties to meet and confer to determine agreed upon proper notice procedures regarding the damages classes. Within twenty-one (21) days from the date of this Order, the parties shall submit a joint proposed Class Notice and Notice Plan.

ii. Plaintiffs' Proposed Injunctive Classes

Plaintiffs also move for certification of proposed injunctive classes. However, Plaintiffs' Complaint does not request injunctive or equitable relief. Plaintiffs' Complaint does not also seek certification of an injunctive class and does not define any such class. Plaintiffs' failure to request injunctive or equitable relief precludes their request for certification of an injunctive class. *See Smith v. Seeco*, No. 15CV00147 BSM, 2016 WL 3541412, *3 (E.D. Ark. Mar. 11, 2016) ("[P]laintiffs' class certification motion attempts to broaden the class and add theories of recovery beyond those pled in the complaint, which will not be permitted. Usually, the class

definition found in the class certification motion must match the class definition found in the complaint."); *Hays v. Nissan N. Am., Inc.*, 2019 WL 13102324, at *1 (W.D. Mo. Sept. 16, 2019) ("District Courts generally agree that to accommodate a new proposed class definition, plaintiffs will need to amend the complaint.") (citation and quotation marks omitted).

Plaintiffs reply brief argues they can pursue an injunctive class because their Complaint summarily requests "other and further relief as the Court deems just and proper." (Doc. #1, p. 7.) This garden variety and boilerplate request for relief is not sufficient to seek certification of an injunctive class. *See, e.g.*, *Hygum v. DiFazio Power & Elec.*, LLC, No. 14–CV–2007, 2015 WL 1247986, at * 3 (E.D. N.Y. 2015) (finding that "Plaintiff's boilerplate prayer for 'any such other and further relief that the Court may deem just and proper' does not state a claim for injunctive relief"). The Court agrees with Defendants that "the first time Plaintiffs disclosed the 'Injunctive Classes' was in the Motion . . . Plaintiffs [should not be permitted] to improperly expand the relief sought and add entirely new proposed classes via the filing of the Motion long after the deadline for amending the Complaint has expired." (Doc. #107, p. 33.) For these reasons, the Court denies Plaintiffs' request to certify the injunctive classes and need not address the Rule 23 requirements.

IV. CONCLUSION

Accordingly, it is hereby **ORDERED** that Plaintiffs' Motion Class Certification (Doc. #95) is GRANTED IN PART and DENIED IN PART.

(1) The motion is GRANTED insofar as Plaintiffs' proposed damages classes are hereby certified as follows:

Damages Classes

Ms. Jones is the representative of the following damages class:

> All Missouri citizens, represented by counsel, who resolved any lawsuit, claim, or cause of action in their favor since January 1, 2019 where Defendants recovered a lien or subrogation interest on behalf of a Medicare Advantage Organization without reducing the amount of the lien or subrogation interest to offset for procurement costs.
>
> Mr. Zakarian is the representative of the following damages class:
>
> All Kansas citizens, represented by counsel, who resolved any lawsuit, claim, or cause of action in their favor since January 1, 2021 where Defendants recovered a lien or subrogation interest on behalf of a Medicare Advantage Organization without reducing the amount of the lien or subrogation interest to offset for procurement costs.

(2) The following are hereby appointed as class counsel: Joseph A. Kronawitter and Taylor P. Foye with the law firm of Horn Aylward & Bandy, LC, and Brian T. Meyers and Brian C. McCart with the law firm of Brian Timothy Meyers;

(3) Within twenty-one (21) days from the date of this Order, the parties shall submit a joint proposed Class Notice and Notice Plan regarding the damages classes;

(4) Within twenty-one (21) days from the date of this Order, the parties shall file a joint proposed amended scheduling order; and

(5) the motion is DENIED insofar as the Court will not certify Plaintiffs' proposed injunctive classes.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2025