THE SUPERIOR COURT OF CONTRA COSTA

IN AND FOR THE COUNTY OF CONTRA COSTA

Savannah Thompson, individually and on behalf of all others similarly situated, *Plaintiff*

v.

CASE NO. C22-02125

John Muir Health Inc., a California Corporation; and Does 1 through 100, Inclusive, *Defendants*

/

ORDER GRANTING CLASS CERTIFICATION

Before the Court is Plaintiff Savannah Thompson's Motion for Class Certification ("Motion"). In this motion, Plaintiff seeks to certify a proposed class, and two subclasses, of persons that received a particular diagnostic procedure while receiving services in Defendant's emergency department during the relevant time periods and were charged an alleged inflated and unconscionable amount for that service.

Defendant John Muir Health opposes the certification.

The Court issued a Tentative Ruling on March 5, 2025, and heard oral arguments from both parties on March 6, 2025. The Court took the matter under submission. The following is the final order of the Court.

The Motion is **granted** with modifications to the Tentative Ruling as discussed below.

Factual Background

On June 14, 2022, Plaintiff was treated at JMH's emergency department because she was concerned she inadvertently overdosed on Fentanyl. At that time, Plaintiff had Kaiser health insurance. As part of her treatment, Plaintiff was given a urine drug screening test. She also was required to, and did, execute a form contract called a "Financial Agreement" that obligated her to pay JMH in accordance with its "regular rates and terms." (Thompson Decl. Ex. 1.)

A few weeks after the visit, Plaintiff received a bill from JMH that sought payment for her treatment. (Thompson Decl. ¶ 5, Ex. 2.) The bill indicated that Plaintiff owed $7,084.57 after a "Kaiser Adjustment" of $3,090.85 and a "Kaiser Payment" of $6,092.30. (*Ibid.*) As the initial bill did not break down the list of charges, Plaintiff requested and received an itemized bill for services rendered that day. (*Id.* at Ex. 3.) Among the list of charges was a particular line item that stood out to Plaintiff as appearing excessively high: the test labeled as "Lab Drug Screen-Urine" (all caps removed), listed as CPT Code 80307 ("Drug Test"). The cost for that one test was listed as $6,095.70.

When Plaintiff was unable to pay the bill, she received follow-up communications from JMH indicating that her account was "Past Due" and "Immediate Action Required" indicating that her account was "at risk of being placed in collections if she did not make payment within 15 days. (*Id.* at Exs. 4-5.) Plaintiff's account did not go to collections because of her filing the instant lawsuit.

Plaintiff contends that the rate charged for the Drug Test is unconscionable as it is approximately 100 times higher than the Medicare reimbursement allowance of $62.14 for the same service at the time. Plaintiff notes that in response to this lawsuit JMH reduced the cost for the Drug Test from $6,095 to $567. While Plaintiff contends that other of the charges for services appeared to be abnormally high, her claims in this matter relate solely to the charge related to the Drug Test.

Plaintiff seeks to certify one main class of plaintiffs along with two subclasses, discussed in more detail below.

A. Overview of Chargemaster and Billing Practices

The Payers' Bill of Rights, Health and Safety Code section 1339.50 et seq., went into effect on July 1, 2004. As part of that legislation, hospitals were required to prepare and make available a list of prices for all possible medical services, knows as a Chargemaster. "The chargemaster lists the uniform charge for given services represented by the hospital as its gross billed charge for a given service or item, regardless of payer type, and sets forth every hospital charge for every type of services, including emergency room services." (*Moran v. Prime Healthcare Management, Inc.* (2023) 94 Cal.App.5th 166, 172 fn. 5 quoting *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 230.)

Each service performed by JMH corresponds to a Current Procedural Terminology ("CPT") code, which then corresponds to a price on the Chargemaster. (Sanders Depo. at 19:19-23:1; 24:1-26:12; 49:25-52:11.) At issue here is the price charged during the relevant period for one particular procedure/CPT code, the Drug Test identified as CPT 80307. Any patient that has that procedure performed when they present at a JMH emergency department will initially be charged the same amount for the Drug Test. The ultimate amount paid by the patient, however, varies depending on several factors including if they have insurance and, if so, who that insurance provider is.

The bill that is ultimately sent to the patient is automatically generated by JMH's the Epic system. (*Ibid.*) How each bill is generated depends on whether the patient has health insurance with an insurer that has a contract with JMH. (*Ibid.*) For example, if the patient does not have insurance, then Epic generates a bill based on application of a 55% discount off the Chargemaster price for uninsured patients. (Sanders Depo. at 27:2-28:2.)

If the patient has insurance, then Epic adjusts the claim based on JMH's contract, if any, with their insurance carrier. (*Id.* at 24:21:25:13.) Specifically, with respect to Kaiser insurance, which Plaintiff had at the time of her visit to JMH's emergency department, the Epic system calculates the amount due (from the patient and Kaiser together) based on a discount of 20% off the Chargemaster prices. (*Id.* at 60:17-61:5.)

Once Epic produces the invoice for the services rendered, it electronically submits the claim to the insurer which pays according to the insurance contract with the patient. Epic then automatically bills the patient for the unpaid balance. (Sanders Depo. at 50:5-52:11; Segall Dep. at 111:10-113:4.)

Standard

Code of Civil Procedure section 382 authorizes class action suits in California "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . .." (Code Civ. Proc. § 382.) The proper legal criterion

for deciding whether to certify a class under Code of Civil Procedure section 382 is whether plaintiff has established by a preponderance of the evidence that a class action is superior to alternative means for a fair and efficient adjudication of the litigation. (*Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 332 ("*Save-On*").) The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. (*Id.* at p. 326; see also *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-40.)

The party seeking class certification under section 382 has the burden of establishing (1) the existence of an ascertainable class, (2) a well-defined community of interest among the class members, and (3) that substantial benefit to litigants and the court would result from class certification. *(See, e.g., City of San Jose v. Super. Ct.* (1974) 12 Cal.3d 447, 458.)

California Code of Civil Procedure section 1781 governs class suits brought under the CLRA. Under this statute: "The court shall permit [a class] suit to be maintained on behalf of all members of the represented class if all the following conditions exist: [¶] (1) It is impracticable to bring all members of the class before the court. [¶] (2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members. [¶] (3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class. [¶] (4) The representative plaintiffs will fairly and adequately protect the interests of the class." (Cal. Code Civ. Proc. § 1781 (b).) There requirements are similar to those under section 382, but "superiority is not required for a class action brought under the CLRA." (*Noel* v. *Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 967.)

In general, courts should not consider the merits of the claim in determining whether to certify a class action. (*Brinker Restaurant Corp. v. Sup.Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1017, 1023.)

Parties' Positions

Plaintiff's Position

Plaintiff alleges that the price charged by JHM for the Drug Test is unconscionable. She contends that this determination can be made on a class-wide basis because all potential class members had to sign the same Financial Agreement obligating them to pay JMH in accordance with its "regular rates and terms," and were subsequently charged the Chargemaster rate for the Drug Test.

"Unconscionability is a question of law." (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 616 quoting *Jones v. Wells Fargo Bank* (2003) 112 Cal.App.4th 1527, 1539.) "Generally, unconscionability is 'recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.'" (*Ibid.* quoting *Shadoan v. World Savings & Loan Assn.* (1990) 219 Cal.App.3d 97, 102.)

"The doctrine includes both procedural and substantive elements. [Citation.] The procedural element requires oppression or surprise. [Citation.] Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form. [Citation.] The substantive element concerns whether a contractual provision reallocates risks in an objectively unreasonable or unexpected manner. [Citation.]" (*Jones*, supra, 112 Cal.App.4th at 1539-40.) "[I]t is clear that the price term, like any other terms in a contract, may be unconscionable." (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 926.)

Here, Plaintiff argues that both the procedural and substantive unconscionability can (and should) be determined on a class wide basis. The procedural aspect is common to each potential class member as

they were all required to sign the Financial Agreement if they received treatment in JMH's emergency department. As such, it would be considered a contract of adhesion, which would show that there is at least some procedural unconscionability. "The procedural element of an unconscionable contract generally takes the form of a contract of adhesion, which imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Sonic-Calabasas A, Inc.*, supra, 57 Cal.4th at 1133 quoting *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071, citation cleaned up.)

"Controversies involving widely used contracts of adhesion present ideal cases for adjudication; the contracts are uniform, the same principles of interpretation apply to each contract, and all members of the class will share a common interest in the interpretation of an agreement to which each is a party." (*La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 877.) As asserted by Plaintiff, "whether the Financial Agreement in this case is a contract of adhesion, and therefore procedurally unconscionable, is a common question for all class members." (Motion at 13:19-21.)

As to the substantive unconscionability, courts "look to the basis and justification for the price" including looking to the market price, the cost of the goods or services to the seller, and the "true value" of the product or service. (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 926-27.) Plaintiff contends that all these considerations are common to the Class as the price for the Drug Test is set in the Chargemaster, and any evidence regarding the nature and cost of the Drug Test will be the same for all.

Once the Declaratory Relief main class is established, the subclasses are ascertainable by using the criteria set forth by Plaintiff to narrow the main class to fit the CLRA and Rosenthal subclasses (defined and discussed in detail below).

JMH's Position

JMH asserts that Plaintiff's claim that the gross amount charged by JMH for the Drug Test is unconscionable is untenable as a class action as virtually no patient was ever obligated to pay the gross amount charged for that Drug Test. Instead, there are a myriad of individual issues that need to be considered, including determining what (if any) insurance coverage applied, reductions for charity or other discounts, along with other factors that determine what (if any) amount is actually charged to or paid by the patient. JMH contends that this would require patient-by-patient review of their medical and billing records to try and determine who may have been impacted by the alleged unconscionable Drug Test charge. It cites a series of cases which have all determined that class certification was not warranted under (what it claims were) similar circumstances: *Hale v. Sharp Healthcare* (2014) 232 Cal.App.4th 50, *Kendall v. Scripps Health* (2017) 16 Cal.App.5th 553, *Hefczyc v. Rady Children's Hosp.-San Diego* (2017) 17 Cal.App.5th 518, *Sarun v. Dignity Health* (2019) 41 Cal.App.5th 1119 (the "Chargemaster Cases"). (Those cases will be discussed below.)

As to the 'predominance' requirement, JMH argues that the "unconscionability of the hospital's charges to each patient is hopelessly individualized," as each patient presented with different conditions, received different care, and was charged different amounts for different reasons. In addition, JMH argues that there is no way to determine if any of the potential class members were actually injured by the Chargemaster rate for the Drug Test since several individual factors need to be reviewed to determine what, if any, amount was actually paid for the Test.

The main evidence JMH relies upon is the declaration of Lisa Sander, who, while employed by OptumInsight, Inc., serves as the Business Office Director of JMH's hospitals and Physician Network. (Sander Decl. ¶ 1.) As such, she and her team are responsible for "all aspects of JHM's billing for patient care." (*Ibid.*) She explains the background on how patients are billed for services rendered when they

present at a JMH emergency department and receive medical care. (*Id.* at ¶¶ 2-14.) In addition, she and her team were responsible for preparing a report that "showed certain information for each patient who visited JMH's emergency rooms" during the relevant period. (¶ 15.) [This Report is the one referenced and used by Plaintiff's counsel in determining the class sizes for the Class and each Subclass.]

Ms. Sander indicates that she reviewed the Report in detail. It "indicates if the patient is self-pay or had insurance, includes the total gross-billed charges for each patient (but not by line item), lists the patient's payment responsibility (but does not include information from the EOB), and indicates whether the patient paid some amount." (¶ 15.) For example, the report shows the following information for Plaintiff:

Plan Type	Total Charges	Allowed Amount	Total Insurance Payment	Patient Responsibility	Patient Paid Amount	Account Balance
KAISER HMO	16267.72	13,176.87	-6092.3	7084.57	-50	7034.57

She notes, however, that the Report has several limitations. This includes the inability to pull line-item details why patients were charged certain amounts. (*Ibid.*) It also includes "inaccurate or not up-to-date" information. (*Ibid.*)

Ms. Sanders explains that the Report does not and cannot include a full list of services provided to the patients, sometimes inaccurately reflects the patient's financial responsibility as it cannot account for charity care, payment plans and other issues. (¶ 16.) It also does not indicate how the patient's payment responsibility was calculated. (*Ibid.*) She highlights some of the deficiencies with examples noting that while certain patients will show that they have account balances and/or paid certain amounts, the amount due for the Drug Test was zero due to insurance agreements. (See e.g. ¶¶ 20-23, Exs. B-C.) Other times, while the gross charge for the Drug Test was initially billed ($5,898.11) the amount ultimately billed to the patient was reduced to $130.14 – an amount negotiated by that patient's insurance carrier and well below the initial rate. (¶ 24-25, Ex. D.)

All these examples are meant to underscore JMH's position that class certification is not appropriate in this case because common issues do not predominate.

Reply

On Reply, Plaintiff argues that JMH's discussion of Plaintiff's claims are a distortion of the theory of recovery actually put forth by her. The Chargemaster Cases cited by JMH are distinguishable as they are all based on completely different theories of liability, and while they are directed toward allegedly unconscionable Chargemaster pricing, none focus in on a single particular charge. Instead, they all attempt to show that all Chargemaster pricing for all services are unconscionably high.

In *Hale,* the plaintiff alleged that Sharp Healthcare unfairly charged uninsured patients more for emergency services that the fees it accepted from patients with private insurance or government plans. (*Hale* 232 Cal.App.4th at 53.) The purported class included over 120,000 patients that had received emergency services during the relevant time. At issue were all services provided to those patients. To avoid needing to dive into an analysis of each individual charge, plaintiff argued she "would attempt to establish a 'reasonable value' for services on a classwide basis using an expert to testify to an across-the-board reduction of the charged fees, such as 140 percent of Medicare...." (*Id.* at 56.) Sharp presented evidence that such a procedure was untenable as it would require the analysis of "over 7,000 line-items for individual bundled procedures, services, and goods derived for each individual patient." (*Id.* at 65.)

This, among other issues, convinced the court to decertify the class.

Kendall also involved a potential class of over 120,000 self-pay emergency department patients. (*Kendall* 16 Cal.App.5th at 563.) Plaintiff likewise argued for a flat percent reduction to all the Chargemaster rates. The hospital noted that a typical Chargemaster included between 10,000 to 20,000 individual charges. The court found that calling for an across-the-board percent reduction was improper but instead indicated that making a determination as to the "reasonable value of medical services is a factual issue to be determined by the trier of fact," considering several issues. (*Id.* at 570-71.)

Hefczyc likewise involved a proposed class of self-pay emergency department patients that were allegedly charged 'grossly inflated' Chargemaster rates for all services rendered. (*Hefczyc* 17 Cal.App.5th at 522.) The hospital explained that it Chargemaster "contains thousands of different line items, relating to procedures, services and goods that are either bundled or specific." (*Id.* at 522-23.) Again, the court noted that trying to determine the 'reasonable rate' for the services provided "would require the trial court to consider evidence relating to thousands of different services, and each class member will have received a billing comprised of different services and therefore different Chargemaster entries...." (*Id.* at 542-43.) The court found that such a case did not meet the predominance requirement.

In *Sarun*, the proposed class consisted of all "individuals who had received treatment [not just emergency patients] at Northridge Hospital Medical Center during the proposed class period who were directly billed for such treatment at chargemaster rates or chargemaster rates less an uninsured discount." (41 Cal.App.4th at 1123.) Again, the court was concerned with the need to determine the reasonable cost for thousands of individual services. Like in *Hale*, the plaintiff proposed a statistical review of all the Chargemaster rates, which the court (as in *Hale*) rejected.

The overriding issues in the above cases related to determining the 'reasonable rate' for hundreds if not thousands of services in once case. Here, the issue is whether the Chargemaster rate for a single test – the Drug Test – is reasonable.

Plaintiff maintains that given her claims relate to determining if the price for a single test, and not a general challenge to every Chargemaster rate, none of the above authorities governs. Given the limited issue in dispute, the class action mechanism is the superior method for addressing this issue.

Analysis

A. Ascertainable Class

Ascertainability is determined by examining (a) the class definition; (b) the size of the class; and (c) the means available for identifying class members. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 974.) A class is "ascertainable" within the meaning of section 382 if it is defined "in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary. [...] [T]his standard [includes] class definitions that are sufficient to allow a member of the class to identify himself or herself as having a right to recover based on the class description." (*Id.* at 980, internal citations omitted.)

1. The class definition:

The class definition should identify a group of unnamed plaintiffs by objectively describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on that description. (*Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1334.)

Here, Plaintiff proposes to define a main class as well as two sub-classes. The main class, identified as

the "Declaratory and Injunctive Relief Class" is defines as follows:

> All persons who (1) received medical services at John Muir Hospital Inc. ("JMH") Emergency Department between October 4, 2018, and December 31, 2022, (2) including the [Drug Test] and (3) were held financially responsible by JMH for the services rendered at the encounter in any amount beyond a flat fee insurance deductible.

Plaintiff proposes two sub-classes within this main class, the "CLRA Subclass" and the "Rosenthal Act Subclass." The CLRA Subclass is defined as:

> All members of the Class who received the medical services on or after October 4, 2019, and had Kaiser insurance or were uninsured.

The Rosenthal Act Subclass is defined as:

> All members of the CLRA Subclass who on or after October 4, 2021, received bills for the medical services rendered at the encounter that stated their accounts were past due.

Defendant does not directly attack the above definitions, but instead generally asserts that for "all the reasons" set forth in their opposition [outline above], "there is no way, without a burdensome, individualized review of records, to determine whether any individual fits within any of the classes, including the CLRA Subclass or the Rosenthal Subclass." It argues that the "Court should reach the same conclusions as reached in *Hale, Kendall, Hefczyc,* and *Sarun*, and deny certification because the class is not ascertainable."

To the extent JMH is arguing that the Classes are not ascertainable "without unreasonable expense or time," that precise argument was rejected by the California Supreme Court in *Noel v. Thrifty Payless, Inc.* 7 Cal.5th 955, which found that such issues "are appropriately addressed outside of and separately from the ascertainability requirement." (*Id.* at 986.)

The above definitions describe objectively identifiable groups and include definitions that would allow members of the class to identify himself or herself as having a right to recover based on the class description.

2. *The size of the class*:

The numerosity requirement is satisfied where the class members are so numerous that it is impracticable to bring them all before the court. (Code Civ. Proc. § 382.) There is no predetermined minimum number of class members necessary as a matter of law for the maintenance of a class action. (*See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.)

Here, Plaintiff has reviewed the patient data provided by JMH to assess how many people would be included in each of the above categories. The process and procedure employed is set forth in the Declaration of Thomas E. Loeser. (Loeser Decl. ¶¶ 7-15.) After reviewing the data and eliminating patients that do not fit within the above definitions, Plaintiffs have determined that the Declaratory and Injunctive Relief Class has at least 1,596 members, the CLRA Subclass has 177 members, and the Rosenthal Subclass has 63 members. (*Ibid.*)

JMH did not directly contest the method of determining the above numbers, nor the numbers themselves.

Based on these figures, the proposed classes and subclasses are sufficiently numerous as it would be impracticable to bring all members into court.

3. *Identification of class members*:

Although the class must be ascertainable, its members need not be identified to bind them by a class action judgment. (*See Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138 [all people who rented a car from Hertz in California during a 4-year period held an ascertainable class].)

JMH maintains a comprehensive online Electronic Medical Record ("EMR") system known as "Epic." All the information related to each of the patients that would fall within the above class definitions is processed and stored within Defendant's Epic medical records system. This includes the patient's name, contact information, date of visit, procedures completed, as well as billing records related thereto. All this information makes it possible to identify each of the potential class members. JMH does not contest any of the above.

B. Well-Defined Community of Interest

The 'community of interest' requirement embodies three factors: (1) common questions of law or fact predominate over individual issues; (2) class representatives with claims typical of the class; and (3) class representatives who can adequately represent the class. (See *Sav-On* 34 Cal.4th at 326.)

1. *Predominance of common questions*:

Each class member must not be required to litigate individually numerous and substantial questions to determine his or her right to recover; and the issues which may be jointly tried, when compared with those requiring separate adjudication, must be sufficiently numerous and substantial to make the class action advantageous to the judicial process and the litigants. *Washington Mut. Bank, FA v. Super. Ct.* (2001) 24 Cal.4th 906, 913-14.

To determine the predominance question, the Court must consider whether "the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment." (*Jaimez v. DAIOHS, USA* (2010) 181 Cal.App.4th 1286, 1298.) The Court must "examine the plaintiff's theory of recovery" and "assess the nature of the legal and factual disputes likely to be presented." (*Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1025 ("*Brinker*").) "The affirmative defenses of the defendant must also be considered, because a defendant may defeat class certification by showing that an affirmative defense would raise issues specific to each potential class member and that the issues presented by that defense predominate over common issues." (*Knapp v. AT&T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941 [quoting *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440, 1450].)

The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brinker,* supra, 53 Cal.4th at 1021-22, internal citations omitted.) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Ibid.*)

a. Declaratory Relief and Injunctive Relief Class

As noted above, the Class is defined to include all people who received the Drug Test at JMH's emergency department during the relevant dates and was held financially responsible by JMH for the services rendered beyond a flat fee insurance deductible. Plaintiff seeks a declaration that the Chargemaster rate for the Drug Test is unconscionable and an injunction requiring JMH to prospectively and retroactively adjust the price for the Drug Test to its fair value.

Analysis

"To qualify for declaratory relief, [a party] would have to demonstrate its action presented two essential

elements: '(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to [the party's] rights or obligations....'" (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909 quoting *Babb v. Superior Court* (1971) 3 Cal.3d 841, 848.) The law authorizes actions for declaratory relief under a 'written instrument' or 'contract.' (Cal. Code Civ. Proc. § 1060.) Here, there is an actual controversy between the parties as to whether the Chargemaster rate for the Drug Test is unconscionable. Thus, it is a proper subject for declaratory relief.

As noted by Plaintiff, unconscionability has a procedural and substantive prong. "An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.'" (*Ali v. Daylight Transport, LLC* (2020) 59 Cal.App.5th 462, 474 quoting *OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 126.) "[A]bsent unusual circumstances, use of a contract of adhesion establishes a minimal degree of procedural unconscionability notwithstanding the availability of market alternatives." (*Walnut Producers of California v. Diamond Foods, Inc.* (2010) 187 Cal.App.4th 634, 646 citations omitted.) As the California Supreme Court has noted, while ordinary contracts of adhesion "are indispensable facts of modern life that are generally enforced [cite], [they] contain a degree of procedural unconscionability without any notable surprises, and 'bear within them the clear danger of oppression and overreaching.'" (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244 citations omitted.)

As to the procedural prong, Plaintiff argues that this can be established on a class wide basis because all persons receiving emergency treatment are required to execute the same Financial Agreement. (Rodriguez Depo. 17:18-:8; 38:3-40:13.) Even if they do not sign the Financial Agreement, JMH treats them as if they signed it regardless. (*Ibid.*) JMH did not directly address the procedural unconscionability prong in its opposition papers. At oral argument, it argued that while emergency room patients are required to sign the Financial Agreement, this alone does not establish procedural unconscionability.

"The California Supreme Court has consistently stated that '[t]he procedural element of an unconscionable contract generally takes the form of a contract of adhesion...." (*Walnut Producers*, supra, 187 Cal.App.4th at 646 quoting *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, 160.) "[T]he use of a contract of adhesion establishes a minimal degree of unconscionability," absent "unusual circumstances." (*Ibid.* quoting *Gatton v. T-Mobile USA, Inc.* (2007) 152 Cal.App.4th 571, 585.) JMH has not identified, or even argued, that there are potentially any 'unusual circumstances' that could remove the procedural unconscionability present in the current case – i.e. where the patients are required to sign the Financial Agreement and even if they do not do so, JMH treats them as if they have.

Plaintiff has sufficiently shown that the presence of procedural unconscionability can be determined on a class wide basis.

Regarding the substantive prong, Plaintiff argues that the current case is markedly different from those cases relied upon by JMH. Here, the singular issue is whether the Chargemaster rate for the Drug Test of between $5,327.47 (2018) and $6,095.70 (2022) was 'unconscionable.' There is no need to delve into the hundreds or thousands of other tests and procedures that were performed on each of the proposed class members. Nor is Plaintiff suggesting that a statistical analysis of pricing be performed (as suggested and rejected in *Hale* and *Sarun*). Plaintiff instead contends that the "common evidence includes information about the nature and cost of the [Drug Test], the comparable Medicare allowance for the [Test] ($67), and the fact that JMH reduced the price for the [Test] from $6,095 to $567 in response to this lawsuit." (Motion at 14:7-10.)

JMH does not specifically attack the declaratory relief class, but generally argues that Plaintiff cannot establish predominance because an individualized review of each patient's medical records is required to determine the propriety or reasonableness of the charge for the Drug Test (i.e. substantive

unconscionability). It again relies on the analysis of the Chargemaster Cases that determining the propriety of Chargemaster rates generally cannot be done on a class wide basis. As outlined above, those cases are significantly different as they involved the attempt to determine the reasonableness of hundreds, if not thousands, or individual tests and procedures. While JMH generally argues that figuring out "what they were charged and why" requires an individualized review of their records, they do not explain why this is the case.

It is undisputed that in the first instance all potential class members' bills started with the Chargemaster rate for the Drug Test. In defining this Class, Plaintiff removed any patient that were not held financially responsible for their treatment, and those that were only responsible for a flat-fee insurance deductible. (Loeser Dec. ¶ 9.) As such, Plaintiff contends that all 1,596 remaining patients were presumptively charged something for the Drug Test.

At oral argument, JMH's counsel pointed out that this is not the correct way to look at this issue. While it may be true that the Chargemaster rate is used on the initial 'bill' prepared by Epic, that is only because JMH is required to do this by law. That number, however, has no actual connection to what the patient is actually charged because of all the various insurance agreements. So, even though the initial 'bill' – which is first sent to the insurance carrier (when applicable) – may indicate $6,095 for the Drug Test, that amount is irrelevant to most patients.

JMH focused on the evidence it presented which shows that several insurance carriers negotiated deals that zero out the cost of the Drug Test – so the patient is never charged anything for that procedure. (See Sanders Decl. ¶¶ 20-23.) For instance, a review of individual patient records indicates that those with Blue Cross/Blue Shield or United Health Care PPO are not charged for the Drug Test as those insurance carriers negotiated not to pay for such a procedure. Other insurance carriers negotiated a specific amount for the Drug Test – without regard to what the Chargemaster shows. For example, a patient with Aetna PPO had the charge for the Drug Test reduced to $130.14 due to JMH's contract with Aetna. (Sanders Decl. ¶¶ 24-25.) These are but a few examples of the myriad of different agreements between the insurance companies and JHM with respect to the amount that will be ultimately charged to a patient for the Drug Test.

Thus, from JMH's perspective, any patient with medical insurance is not correctly part of the class proposed by Plaintiff because the Chargemaster for the Drug Test never actually impacts them. It is merely a required line item on the initial 'bill' sent to the insurance company – each of which handle that issue differently. For most insured patients, the number on that initial bill – i.e. the Chargemaster rate – is irrelevant because of the contracts their insurance company has with JMH. Therefore, these patients should not be part of the class – because the Chargemaster rate has no bearing on what they pay. Instead, the amount each insured patient is billed and ultimately pays is dictated by the patient's insurer. Thus, it does not matter if the Chargemaster is determined to be 'unconscionable,' since most of the insured patients only pay the amount negotiated by their insurance company regardless of what the initial Chargemaster states.

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1022 quoting *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.908, 916.) "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." (*Sav-on*, supra, 34 Cal.4th at 334 quoting *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1278.) "Individual issues do not render class certification inappropriate so long as such issues may effectively be managed." (*Id.* at 334.)

Here, Plaintiff's Class Definition is overly broad and includes patients that would not, and could not, have been impacted by the Chargemaster rate for the Drug Test because their insurance carriers negotiated contracts with JMH that made the Chargemaster rate irrelevant to what the patient paid. "Although '[t]he fact that certain member of the class may not have been injured at all does not defeat class certification [cite], [the Court] can perceive no reason to include within the class a sizeable segment of [patients] who could not have been harmed and who could easily be excluded from the class definition." (*In re Cipro Cases I & II* (2004) 121 Cal.App.4th 402, 418.)

Kaiser Insurance and Uninsured Patients

The above arguments by JMH relate to insurance carriers other than Kaiser. As noted above, Plaintiff has provided evidence that Kaiser's agreement with JMH starts with the Chargemaster rate and then reduces that amount by a certain amount (20%). In such cases, there is a direct impact on the patient due to the alleged unconscionable Chargemaster rate for the Drug Test. In the case of Kaiser patients, it is not a question of whether they are damaged by the allegedly inflated amount of the Drug Test, but rather a question of how much they are damaged.

Similarly, the record indicates that JHM provides a standard 55% discount off the Chargemaster price for uninsured patients. Thus, the initial Chargemaster rate directly impacts how much an uninsured patient will ultimately pay for the Drug Test. While there may be other discounts and charity available to uninsured patients, those individual "issues do not render class certification inappropriate so long as such issues may effectively be managed." (*Sav-On Drug*, supra, 34 Cal.4th at 334.) The Court finds that those issues are more appropriately addressed later and do not impact finding their claims eligible for class certification.

Based on the above, Plaintiff has failed to meet her burden to demonstrate the predominance of common questions as to the main Class – at least as defined in her Complaint. The Class Definition is overly broad in that it includes all insured patients, including those that could not have been impacted by the Chargemaster rate due to the various insurance companies' contracts with JHM. The Court finds that the Declaratory Relief and Injunctive Relief Class should be revised as follows:

> All persons who (1) received medical services at a John Muir Hospital Inc. ("JMH") Emergency Department between October 4,2018, and December 31, 2022, (2) including the Service, (3) had Kaiser insurance or were uninsured, and (4) were held financially responsible by JMH for the services rendered at the encounter in an amount beyond a flat fee insurance deductible.

b. CLRA Subclass

The CLRA Subclass is limited to those members of the Declaratory Relief Class that received services after October 4, 2019, and had either Kaiser Insurance or were uninsured. As noted by Plaintiffs, this cause of action alleges "that JMH violated the CLRA by '[i]nserting an unconscionable provision in the contract.'" (Cal. Civ. Code § 1770 (a)(19).) If the Chargemaster Rate for the Drug Test is determined to be unconscionable, Plaintiff has met that requirement for a violation. This Subclass is limited to insured patients with Kaiser insurance coverage because Kaiser's agreement with JMH is to just reduce the Chargemaster rate by a certain percentage (20%). (Motion at 14:26-15:3, Sanders Depo. 41:23-45:5; 60:17-61:5.) It also includes uninsured patients since they are also charged just a percentage of the Chargemaster. (*Id.*, Sanders Depo. at 27:1-28:8.)

JMH's reference to other insurance carrier agreements which would zero out that line item or address it in some other manner are not relevant to this Subclass definition. JMH also does not dispute that the above is how these two categories of patients are charged for those services.

Based on the above, Plaintiff has met her burden to demonstrate the predominance of common questions as to this Subclass.

c. Rosenthal Subclass

The Rosenthal Subclass includes all members of the CLRA Subclass, who "after October 4, 2021, received bills for the medical services rendered at the encounter that stated their accounts were past due." Plaintiff indicates this class includes 63 members.

It is a violation of the Rosenthal Act to falsely represent "the character, amount, or legal status of any debt." (*Aguilar v. Mandarich Law Group, LLC* (2023) 87 Cal.App.5th 607, 622 quoting 15 U.S.C. § 1692e(2)(A).). The Rosenthal Act is a "strict liability statute that does not ordinarily require proof of an intentional violation." (*Ibid.*) Actual damages are not an element of liability. (Cal. Civ. Code § 1692k (a).) Instead, in a class action the court is authorized to award damages on a class wide basis "not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector." (*Id.* at subd. (a)(2)(B).)

Under Plaintiff's theory, if the amount owed is determined to be unconscionable "all that remains to be determined is whether the dunning letters [i.e. debt collection letter] violated the Rosenthal Act under the common circumstances." (Motion at 16:1-3.)

JMH argues that determining which letters that were sent included the term "past due" would require an individual review of each class member's file to determine if such a letter was sent. It notes that the first invoice or "patient statement" sent to all patients has a "statement date" and "due date," but does not include the works "past due." Only a follow-up invoice would potentially include that term, and whether it did or not depends on several factors. There is no database field that JMH can search to determine if any invoice sent to a particular patient included the term "past due."

As noted above, "[i]ndividual issues do not render class certification inappropriate so long as such issues may effectively be managed." (*Sav-on*, supra, 34 Cal.4th at 334.) The fact that JHM might need to review its records to determine what letters were sent to the potential class members does not show that common issues do not control.

Based on the above, Plaintiff has met her burden to demonstrate the predominance of common questions as to this Subclass.

2. *Typicality of Plaintiff's Claim:*

"Although the questions whether a plaintiff has claims typical of the class and will be able to adequately represent the class members are related, they are not synonymous." (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) ""Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought."' [Citations.] The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.' [Citation.]" (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502 quoting *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508.)

JMH argues that Plaintiff's experiences in presenting to the emergency department were unique and required a unique set of services and care, and that she was charged a certain amount because of her particular insurance plan. As such, JMH contends that Plaintiff's claims are atypical of the other potential members of the Class.

The issue presented, however, is whether the class members were charged an unconscionable fee for the Drug Test when they came in for emergency services. What other tests were performed, or

symptoms were exhibited, are irrelevant to this inquiry. All class members received services in JMH's emergency department which included the Drug Test. They were all charged the Chargemaster rate for that procedure.

Plaintiff is sufficiently typical of the classes she seeks to represent.

3. Adequacy of Acosta to Represent the Class:

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 numerous citations omitted.) Plaintiff has two firms representing her, both of which have extensive experience prosecuting class action complaints. There is no evidence of any conflicts between Plaintiff and the potential class member's interests. She also acknowledges her responsibilities to the members of the proposed class and intends to actively participate in the prosecution of the complaint.

JMH does not address or dispute any of the above.

Plaintiff is an adequate representative.

C. Manageability/Superiority

Initially, "superiority is not required for a class action brought under the CLRA." (*Noel*, supra, 7 Cal.5th at 968.)

For a "class action to be maintained, it must be 'superior to other available methods for the fair and efficient adjudication of the controversy.'" (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 662.) "A class should be certified only if it will provide substantial benefits both to the court and the litigants." (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 914.) "Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification." (*Ibid.*)

In this case, class adjudication presents a substantial benefit to the class members whose individual claims are relatively small, so that they are unlikely to pursue individual litigation. In general, ", a class suit is appropriate 'when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.'" (*Basurco v. 21st century Insurance Co.* (2003) 108 Cal.App.4th 110, 117 quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

The Court concludes that class adjudication presents a substantial benefit to the court, promoting the efficient use of judicial resources, avoiding duplicative discovery and pretrial motions, and multiple trials on predominantly common issues.

Conclusion

Plaintiff's motion is denied as to the Declaratory and Injunctive Relief Class as defined in the Complaint. Instead, Plaintiff's motion is granted as to a more limited Class, defined as follows:

> All persons who (1) received medical services at a John Muir Hospital Inc. ("JMH") Emergency Department between October 4,2018, and December 31, 2022, (2) including the Service, (3) had Kaiser insurance or were uninsured, and (4) were held financially responsible by JMH for the services rendered at the encounter in an amount beyond a flat fee insurance deductible.

Plaintiff's motion is granted as to the CLRA and Rosenthal Act Subclasses.

IT IS SO ORDERED

Dated 3/21/25

HONORABLE EDWARD G. WEIL

SUPERIOR COURT JUDGE

Superior Court of California, Contra Costa County

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K. Bieker
Court Executive Officer

CLERK'S CERTIFICATE OF MAILING

CASE NAME:	CASE NUMBER:
SAVANNAH THOMPSON VS. JOHN MUIR HEALTH	C22-02125

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

THOMAS ERIC LOESER
1809 7TH AVE STE 1610
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JAY T RAMSEY
1901 AVE. OF THE STARS STE 1600
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SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY

I DECLARE UNDER PENALTY OF PERJURY THAT I AM NOT A PARTY TO THE WITHIN ACTION OR PROCEEDING; THAT ON THE DATE BELOW INDICATED, I SERVED A COPY OF THE **ORDER GRANTING CLASS CERTIFICATION** BY DEPOSITING SAID COPY ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID IN THE UNITED STATES MAIL AT MARTINEZ, CA AS INDICATED ABOVE TO ALL ACTIVE AND DISPOSITIONED PARTIES.

DATE: 3/21/2025

BY: _____
K. CASILLAS, DEPUTY CLERK