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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

YVONNE JANSKY,

Plaintiff and Appellant,

v.

LABORATORY CORPORATION OF
AMERICA et al.,

Defendants and Respondents.

A145859

(San Francisco
Super. Ct. No. CGC-12-518072)

Appellant Yvonne Jansky appeals from the trial court's denial of her motion for class certification. Among other contentions, she argues that the trial court abused its discretion by denying class certification because common issues of law or fact predominate. According to Jansky, common issues predominate because the case involves a central issue about the legality of a uniform practice of coding insurance claims used by respondent Laboratory Corporation of America (LabCorp). We are not persuaded. We conclude that the court exercised proper discretion in finding that, regardless of such a central issue, the benefits of proceeding as a class action were outweighed by the numerous and substantial individual issues that would require resolution for putative class members to recover under the theory of Jansky's case. Accordingly, we affirm.

I.
BACKGROUND

Jansky has medical insurance through Anthem Blue Cross (Anthem). On two occasions, once in 2010 and again in 2011, Anthem denied insurance coverage for the costs of some, but not all, blood tests that Jansky's doctor had requisitioned from LabCorp, a clinical laboratory.

Jansky brought this suit in 2012 alleging that LabCorp wrongfully caused Anthem to partially deny coverage and illegally attempted to collect from her the uncovered charges.¹ Specifically, she alleged that when LabCorp submitted her insurance claims to Anthem for payment, it improperly changed the order of certain ICD codes from the order in which they were listed on the doctor's requisition forms. ICD codes get their initials from a manual published by the World Health Organization called the "International Classification of Diseases, Ninth Revision, Clinical Modification," and they represent the healthcare provider's diagnosis or the patient's symptoms, conditions, complaints, or reasons for seeking medical care. ICD codes are usually numerical, but they are sometimes prefaced with a letter. Insurance companies typically require ICD codes to process claims, and the codes are used, often in conjunction with other codes, to determine whether services are covered by a patient's policy.²

¹ Jansky amended her complaint several times, and the Fourth Amended Complaint is the operative complaint. It asserts eleven causes of action, but the parties affirm in their briefing in this court that only the following seven remain at issue: unfair competition under Business and Professions Code section 17200 et seq., fraudulent concealment, intentional interference with contractual relations, intentional interference with prospective economic relations, negligent interference with prospective economic relations, Consumer Legal Remedies Act (CLRA), and Rosenthal Fair Debt Collection Practices Act.

² According to Jansky, another category of codes required to process insurance claims is also listed on doctors' requisition forms. These codes, which are not at issue in this case, are called Current Procedural Terminology (CPT) codes. CPT codes generally describe which service was provided, while ICD codes describe why the service was provided.

Jansky claims that there are two main categories of ICD codes: “diagnostic” codes and “screening” codes. LabCorp contends that the distinctions between these categories are imprecise and not generally understood. Nonetheless, it has its own internal definition of these two types of codes. It defines a diagnostic code as a “code given to indicate the testing of a person to rule out or confirm a suspected diagnosis because the patient has some sign or symptom.” And it defines a screening code as a “code given to indicate the testing for disease or disease precursors in seemingly well individuals so that early detection and treatment can be provided for those who test positive for the diseases.”

Some ICD codes are called “V codes,” which apparently convey information about a patient’s health status or the reasons a patient contacted the healthcare provider. V codes include such matters as, for example, a patient’s having “contact with or exposure to rabies,” having an “infection with microorganisms resistant to penicillin,” wanting an “elective hair transplant for purposes other than remedying health state,” or seeking a “routine general medical examination at a health care facility.” According to Jansky, LabCorp treated V codes as screening codes.

The parties agree that LabCorp formerly had a practice of entering V codes after non-V codes when it submitted insurance claims, regardless of the order in which the codes were listed on the doctors’ requisition forms. Jansky maintains that this practice was illegal and done by LabCorp to obtain insurance payments more quickly. LabCorp denies that the practice was improper or that the company benefitted from it.

In early 2015, Jansky moved for class certification, seeking to certify three classes. The first two classes included patients whose doctors had submitted requisition forms with at least one screening and one diagnostic code. The third class included members of the first two classes who received debt-collection correspondence from LabCorp. The three proposed classes were as follows:

The “Anthem Blue Cross” Class: All Californians who were insured by Anthem Blue Cross and who had a manual laboratory requisition form containing more than one ICD code, one of which is a screening code and one of which is a

diagnostic code, processed by LabCorp in California from February 8, 2008 to April 12, 2012.

The “Post-September 2010” Class: All Californians who had health insurance not grandfathered by the Affordable Care Act and who had a manual laboratory requisition form containing more than one ICD code, one of which is a screening code and one of which is a diagnostic code, processed by LabCorp in California from September 23, 2010 to April 12, 2012.³

The “Debt Collection” Class: All individuals who are members of either the Anthem Blue Cross Class or Post-September 2010 Class who received debt collection correspondence from LabCorp.

In her appellate briefing, Jansky claims that she also proposed subclasses. Her claim is based on a comment in a footnote in the reply brief she filed in support of her motion for class certification. In the footnote, she remarked that “subclasses can easily be made based on specific V codes” because many claims submitted to Anthem by LabCorp contained “at least one non-V code and at least one V code technically defined as a ‘routine and administrative examination’ . . . or ‘screening’ These screening codes therefore comprise the vast majority (approximately 70%) of the V codes submitted during the[] class periods. This demonstrates that the vast majority of V codes submitted by LabCorp fall within these categories of codes.”⁴

³ According to Jansky, Anthem was required to cover screening services after September 2010 under the requirements of the Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 23, 2010), § 2713, 124 Stat. 119, 131-132 (2010)). She claimed membership in this class because her 2011 claim for screening services was allegedly rejected due to LabCorp’s code-switching practice.

⁴ We are skeptical that this comment constituted a proposal for subclasses that the trial court was required to consider. (See *Block v. Major League Baseball* (1998) 65 Cal.App.4th 538, 545 [court not required to consider subclasses when not given “a concrete proposal describing how such subclasses would be defined, how they would be administered, or how they would help the court deal with the complexities inherent in the proposed class”].) But we need not decide the issue because, as we discuss below, we affirm the trial court’s finding that Jansky failed to establish a well-defined community of interest, and we conclude that this finding applies to the subclasses even assuming that they were properly proposed.

LabCorp objected to class certification, the parties filed opposing briefs with supporting declarations, and the parties subsequently challenged each other's evidence. One declaration LabCorp filed in support of its opposition to class certification that is relevant to the issues in this appeal was an expert declaration of Professor Laurence C. Baker, Ph.D. After a hearing, the trial court overruled the majority of the parties' evidentiary objections, including all of the objections to Professor Baker's declaration, and it then denied class certification in a separate 14-page written order. As to the six non-CLRA causes of action, the court found that the proposed classes were not ascertainable, the proposed classes lacked a well-defined community of interest because, among other reasons, common questions did not predominate, and proceeding as a class would be neither manageable nor superior to proceeding in the absence of a class. As to the CLRA cause of action, the court found that common questions did not predominate.

The trial court identified five reasons supporting its finding that "common questions do not predominate and that individual issues would overwhelm a class trial in this matter." First, it found that "difficult and highly specific" determinations would be necessary regarding each class member's insurance coverage. According to the court, these determinations would be necessary because insurers' coverage decisions are based on multiple factors, including the patient's "policy, age, sex, personal and family medical history," the "frequency of the service rendered, and whether any deductible has been met." The court believed that each class member's insurance-coverage decisions would have to be reviewed because the scope of insurance coverage is neither universal nor dependent on any particular set of ICD codes. In reaching this first finding, the court expressly relied on Professor Baker's declaration.

Second and relatedly, the trial court found that each member's coverage decision would have to be reviewed to determine whether insurance coverage for a service was actually denied.

Third, the trial court found that each class member would have to show that the order of his or her codes was switched and that LabCorp was responsible for it. The parties agree that LabCorp has no liability for submitting insurance claims that listed

diagnostic (or non-V) codes before screening (or V) codes if that was the same order in which they were listed on the requisition form or in a subsequent request by the doctor.

Fourth, the trial court found that each class member would have to show that coverage for a service was denied *because* the order of the ICD codes was switched and not for some other reason.

Fifth and lastly, the trial court found that each class member would have to show “legally cognizable harm” by establishing that he or she was required to pay out-of-pocket costs for a service for which coverage was denied. This would require a review of whether the service was covered by another insurance provider or an employer and, if not, whether LabCorp actually demanded payment from the class member.

Jansky appeals from this order denying class certification.

II. DISCUSSION

A. *The Standards of Review.*

“On review of a class certification order, an appellate court’s inquiry is narrowly circumscribed. ‘The decision to certify a class rests squarely within the discretion of the trial court, and we afford that decision great deference on appeal, reversing only for a manifest abuse of discretion: “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.” [Citation.] A certification order generally will not be disturbed unless (1) it is unsupported by substantial evidence, (2) it rests on improper criteria, or (3) it rests on erroneous legal assumptions.’” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1022 (*Brinker*)). In reviewing factual determinations, our standard of review “is not whether substantial evidence might have supported an order granting the motion for class certification, but whether substantial evidence supported the trial court’s conclusion” (*Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 940–941.)

In reviewing whether the denial of class certification was based on improper criteria or erroneous legal assumptions, our standard of review differs from the standard

applicable in an ordinary case. “Under ordinary appellate review, we do not address the trial court’s reasoning and consider only whether the result was correct. [Citations.] But when denying class certification, the trial court must state its reasons, and we must review those reasons for correctness. [Citation.] We may only consider the reasons stated by the trial court and must ignore any unexpressed reason that might support the ruling. [Citations.]” (*Knapp v. AT & T Wireless Services, Inc., supra*, 195 Cal.App.4th at p. 939.) At the same time, if any one of the trial court’s stated reasons was sufficient to justify the denial of class certification, we must affirm the order. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 436.)

B. The Law Governing Class Certification.

Code of Civil Procedure section 382 authorizes a class action “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.” This statute requires a party seeking class certification normally to demonstrate “the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.] ‘In turn, the “community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” ’ ” (*Brinker, supra*, 53 Cal.4th at p. 1021.)

A party seeking class certification of a claim under the CLRA is required to demonstrate similar, but slightly different, requirements. These include that (1) it would be impracticable to bring all the members of the class before the trial court; (2) questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members; (3) the claims of the class representative are typical of the class; and (4) the class representatives will fairly and adequately protect the interests of the class. (Civ. Code, § 1781, subd. (b).) But the CLRA “does not explicitly require an ascertainable class” and a showing of superiority is not required. (*Thompson v. Automobile Club of Southern California* (2013) 217 Cal.App.4th 719, 728.)

“The certification question is ‘essentially a procedural one’ ” that examines “whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326-327 (*Sav-On*)). A certification motion “ ‘does not ask whether an action is legally or factually meritorious’ ” but rather whether the common issues it presents “ ‘are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.’ ” (*Id.* at p. 326; see also *Mora v. Big Lots Stores, Inc.* (2011) 194 Cal.App.4th 496, 507 [“the central issue in a class certification motion is whether the questions that will arise in the action are common or individual, not plaintiffs’ likelihood of success on the merits of their claims”].)⁵

1. Common questions of law or fact must predominate.

We begin by focusing on the requirement for class certification that common questions of fact or law must predominate, because this requirement applies to all of Jansky’s claims, including her CLRA claim. “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.’ [Citations.] . . . A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. ‘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, supra*, 53 Cal.4th at pp. 1021–1022, fn. omitted.) “[The court] must determine whether the elements necessary to establish

⁵ Thus, in considering Jansky’s argument that the trial court’s denial of class certification was based on improper criteria and erroneous legal assumptions, we express no view on the disputed contention that LabCorp’s code-switching practice was illegal.

liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence.”

(*Id.* at p. 1024; see also *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 28 (*Duran*) [assessment of predominance “ ‘hinges on “whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment” ’ ”].)

2. Common issues do not necessarily predominate simply because a uniform policy or practice is alleged to be illegal.

Jansky argues that common questions necessarily predominate because the “central issue” is the legality of LabCorp’s practice of listing diagnostic (or non-V) codes before screening (or V) codes when submitting insurance claims.⁶ According to her, when “the lawfulness of a uniform practice applied to the class members is subject to common proof, that issue predominates and class certification should be granted.” She maintains that class certification was particularly appropriate because LabCorp’s practice was undisputed and “it applied across the board to each class member which can be demonstrated with common proof, the legality of which is susceptible to class treatment.”

By focusing exclusively on this coding practice, however, Jansky ignores that determining its legality would still, as we discuss below, leave many questions unresolved that are essential to liability under the theory of her case. The existence of one common question—here, the legality of LabCorp’s coding practice—does not necessarily mean that other questions necessary to resolve the putative class claims do not predominate. (See *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 350 [“ ‘What

⁶ Jansky insists in her appellate briefing that the trial court ruled that the “central issue” of LabCorp’s code-changing practice “was suitable for class treatment.” We do not see it that way. What the court actually stated was, “I think that there is reason to define a class as individuals who had their coding reversed or reordered, that the defendants admit that they placed the diagnostic code first and the screening code second. [¶] The difficulty I have with the motion and which leads me to a tentative to deny the motion for class certification is that that’s only part of the equation.” The determination by the court that LabCorp’s code-changing practice is “part of the equation” in evaluating the suitability of proceeding as a class was plainly *not* a conclusion by the court that Jansky’s claims should be resolved in a class proceeding.

matters . . . 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’ ”].⁷)

To be sure, “the *Brinker* court observed ‘a uniform policy consistently applied’ *can* support certification. [Citation.] But it did not say that a case *must* proceed as a class action when there is such a facially uniform policy. *Brinker* simply points out that class treatment *can be* appropriate in a wage and hour case involving a uniform policy, especially one that is being applied consistently.” (*Koval v. Pacific Bell Telephone Co.* (2014) 232 Cal.App.4th 1050, 1059.) In assessing whether common issues predominate, courts “must ‘focus on the policy itself’ and address whether the plaintiff’s *theory* as to the illegality of the policy can be resolved on a classwide basis.” (*Hall v. Rite Aid Corp.* (2014) 226 Cal.App.4th 278, 289 (*Hall*); see also *Sav-On, supra*, 34 Cal.4th at p. 327 [proper inquiry is “whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment”].)

Jansky argues that the trial court’s concerns about unresolved issues “erroneously focused on the impact” of LabCorp’s code-switching practice. She points out, correctly enough, that “a class action ‘is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages’ [Citation.]” (*Sav-On, supra*, 34 Cal.4th at p. 333.) But trial courts properly consider the impact of a policy or practice when ultimate liability depends on it. “[P]laintiffs may not simply allege such a [uniform] policy or practice, however. They must present substantial evidence that proving both the existence of the defendant’s uniform policy or practice *and the alleged illegal effects of that policy or practice* could be accomplished efficiently and manageably within a class setting.” (*Cruz v. Sun World Internat., LLC* (2015) 243 Cal.App.4th 367, 384, italics added; see also *Schermer v. Tatum* (2016) 245 Cal.App.4th

⁷ California courts may look to case law interpreting rule 23 of the Federal Rules of Civil Procedure for guidance on state class-certification questions. (*Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 147, fn. 2 (*Soderstedt*).

912, 926 [suggesting appropriateness of considering whether uniform practice “ ‘affected all of the members of the potential class in the *same manner*’ ”]; *Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 991 [“We see nothing inappropriate in the trial court’s examination of the parties’ substantially conflicting evidence of [defendant’s] business policies and practices and the impact those policies and practices had on the proposed class members”]; *Dunbar v. Albertson’s, Inc.* (2006) 141 Cal.App.4th 1422, 1427 [“although the evidence of a standardized or uniform policy or practice can support class certification it does not compel class certification”].)⁸

We readily recognize that class treatment is often appropriate for legal challenges to uniform practices or policies. (See, e.g., *Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1219 (*Nicodemus*) [class certification proper in case alleging that hospital had uniform policy of charging statutorily excessive costs for records, even though class members would still be required to show that their records request was made in contemplation of litigation].) Many cases certifying classes based on challenges to uniform practices or policies have involved allegations of employer violations of labor laws. “Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at pp. 1033, 1039; see also *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 409 [alleging that employees were improperly denied meal-and-rest periods and were required to work overtime and off the clock]; *Hall, supra*, 226 Cal.App.4th at pp. 292-293 [alleging that employees were improperly denied seats while working]; *Benton v.*

⁸ Federal authority is in accord. (See, e.g., *Vinole v. Countrywide Home Loans, Inc.* (9th Cir. 2009) 571 F.3d 935, 946 [trial court “abuses its discretion in relying on internal uniform exemption policy to the near exclusion of other factors relevant to the predominance inquiry”]; *In re Wells Fargo Home Mortg. Overtime Pay Litig.* (9th Cir. 2009) 571 F.3d 953, 958-959 [improper for trial court to “essentially create a presumption that class certification is proper when an employer’s internal exemption policies are applied uniformly to the employees. . . . ¶. . . [Defendant’s] uniform exemption policy says little about the main concern in the predominance inquiry: the balance between individual and common issues”].)

Telecom Network Specialists, Inc. (2013) 220 Cal.App.4th 701, 726 [alleging that employees were improperly denied meal-and-rest periods and appropriate compensation for overtime]; *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 234 [alleging that employees were improperly denied meal-and-rest periods and that overtime was not properly adjusted for certain benefits and bonuses]; *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1150–1151 (*Bradley*) [alleging that employees were improperly denied meal-and-rest periods].)

But even in labor-law cases, courts accept that, regardless of a uniform policy or practice, trial courts are not required to grant class certification when liability also turns on resolving disparate individual issues. As our state Supreme Court recognized in *Duran*, “California courts have been reluctant to certify class actions alleging [employee] misclassification” when variations were presented in how the policies were implemented with different employees. (*Duran, supra*, 59 Cal.4th at pp. 30–31 [class certification properly denied when question whether class of bank employees was exempt under labor laws from entitlement to minimum-wage and overtime requirements depended on individual determinations of whether employees spent most of their work time away from bank]; see also *Mies v. Sephora U.S.A., Inc.* (2015) 234 Cal.App.4th 967, 978 (*Mies*) [class certification properly denied because question whether category of employees was exempt from certain labor laws depended “not only upon factors related to the job . . . but also . . . what an employee actually does on the job”]; *Soderstedt, supra*, 197 Cal.App.4th at p. 149 [class certification properly denied when question whether personal bankers were exempt under labor laws depended on individual job duties and separate, fact-specific determinations about the actual work performed].)

Courts have similarly upheld the denial of class certification in cases alleging, as Jansky’s case alleges here, the denial of insurance coverage to putative class members who have different policies and distinct claims. (See, e.g., *Newell v. State Farm General Ins. Co.* (2004) 118 Cal.App.4th 1094, 1103 [class certification properly denied because even if insurers had wrongly “adopted improper claims practices to adjust . . . claims, each putative class member still could recover for breach of contract and bad faith *only*

by proving his or her individual claim was wrongfully denied, in whole or in part, and the insurer's action in doing so was unreasonable"]; *Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 118 [class certification properly denied because even if insurer had uniform policy of improperly denying benefits, each putative class member still required to prove that company breached his or her individual policy].)

True enough, courts after *Brinker* have “agreed that, where the theory of liability asserts that the employer’s uniform policy violates California’s labor laws, factual distinctions concerning whether or how employees were or were not adversely impacted by the allegedly illegal policy do not preclude certification.” (*Hall, supra*, 226 Cal.App. 4th at p. 289.) *Brinker* “expressly rejected . . . [the idea] that evidence showing some employees took rest breaks and other employees were offered rest breaks but declined to take them made . . . certification inappropriate.” (*Bradley, supra*, 211 Cal.App.4th at p. 1143.) “ “[P]redominance is a comparative concept,” ” and “ [t]he possibility that a defendant may be able to defeat the showing of an element of a cause of action “ ‘as to a few individual class members[,] does not transform the common question into a multitude of individual ones.’ ” ” (*Nicodemus, supra*, 3 Cal.App.5th at pp. 1218-1219.)

Still, “class treatment is not appropriate ‘if every member of the alleged class would be required to litigate numerous and substantial questions determining his [or her] individual right to recover following the “class judgment” ’ on common issues.” (*Duran, supra*, 59 Cal.4th at p. 28.) “ ‘For purposes of class action manageability, a defense that hinges liability *vel non* on consideration of numerous intricately detailed factual questions . . . is different from a defense that raises only one or a few questions and that operates not to extinguish the defendant’s liability but only to diminish the amount of a given plaintiff’s recovery.’ [Citation.] Defenses that raise individual questions about the calculation of *damages* generally do not defeat certification. [Citation.] However, a defense in which *liability itself* is predicated on factual questions specific to individual claimants poses a much greater challenge to manageability. This distinction is important. As we [have] observed . . . : ‘Only in an extraordinary situation would a class action be

justified where, subsequent to the class judgment, the members would be required to individually prove not only damages but also liability.’ ” (*Id.* at p. 30.)

Accordingly, we reject Jansky’s argument that common issues necessarily predominate because the legality of LabCorp’s coding practice is a central issue that is alleged to be illegal.

C. The Trial Court Did Not Abuse Its Discretion in Finding that the Need to Resolve Numerous and Substantial Individualized Issues Outweighed the Potential Benefits of Proceeding as a Class Action.

We cannot conclude that this case presented the kind of “extraordinary situation” described in *Duran* so as to have required the trial court to have granted class certification. (*Duran, supra*, 59 Cal.4th at p. 30.) The theory of Jansky’s case is that LabCorp’s coding practice was illegal and caused Anthem to deny coverage for the costs of lab tests. In our view, the court permissibly exercised its discretion in finding that the benefits of proceeding as a class action were outweighed because the ability of putative class members to recover under this theory would require the resolution of numerous and substantial other issues.

We begin our review of the trial court’s weighing of the benefits and costs of proceeding as a class by pointing out that the purportedly common question here—the legality of LabCorp’s coding practice—is not all that common given the expansive breadth of the proposed classes and subclasses and the incongruity of those classes with the actual theory of the case. The complaint alleged that LabCorp illegally “chang[ed] codes related to screening, routine or preventative laboratory work from a principal, first-listed code to a secondary code when billing health insurers for reimbursement.” Specifically, it alleged that in 2010 LabCorp “changed the first-listed code from the V70.0 code to 627.2, one of the secondary diagnostic codes on the order.” And in 2011, LabCorp “again changed the primary, first-listed code from V70.0 to a secondary diagnostic code in a claim submitted to [Jansky’s] insurer.” In other words, a lynchpin in the theory of the case is that LabCorp *switched* the order of the ICD codes when it submitted insurance claims.

This feature, however, is completely missing from the definitions of Jansky's proposed classes or subclasses. The first class was proposed to include patients covered by Anthem "who had a manual laboratory requisition form containing more than one ICD code, one of which is a screening code and one of which is a diagnostic code." Similarly, the second class was proposed to include patients covered by health insurance "not grandfathered by the Affordable Care Act and who had a manual laboratory requisition form containing more than one ICD code, one of which is a screening code and one of which is a diagnostic code." And in her alleged proposal for subclasses, Jansky apparently urged that the subclasses include patients whose doctors' requisition forms included a V code and a non-V code. Thus, none of the proposed classes or subclasses limit putative class membership to patients whose codes were switched by LabCorp. In her appellate briefing, Jansky characterizes her two main proposed classes as the " 'Code Changing' classes," but, in fact, there was nothing in their definitions that included the concept of code changing.

And this was not the only central element of the theory of the case missing from the proposed classes or subclasses. The complaint asserted that LabCorp's code-switching practice "result[ed] in co-payments, premiums and other burdens being incurred by Plaintiff and members of the Plaintiff Class." None of the proposed classes or subclasses, however, limit membership to patients who were denied coverage or faced any other financial burdens.

These missing elements of the proposed classes or subclasses—that class members' codes were switched and that insurance was denied as a result—are basic and essential to Jansky's theory of the case. Thus, resolving Jansky's purported predominate common question—the legality of LabCorp's coding practice—would have no effect on class members whose insurance claim contained two or more *un*-switched codes, who were not denied any insurance coverage, or who experienced no financial burdens. In other words, rather than providing a common answer for all class members, resolving the legality of LabCorp's practice of coding would provide only a partial answer for a portion of the class.

Furthermore, we agree with the trial court that the members of the portion of the class that would be affected by a determination of the legality of LabCorp's coding practice would still be required to prove numerous and substantial additional elements before they could establish an entitlement to recovery. As we have mentioned, the court identified five such elements. First, it found that class members would have to show that insurance coverage was not denied because of "difficult and highly specific" provisions in their insurance policies. This finding was based on evidence that insurance coverage is neither universal nor dependent on any particular set of ICD codes, and it is instead based on multiple factors, including the patient's "policy, age, sex, personal and family medical history," the "frequency of the service rendered, and whether any deductible has been met." Second, the court found that class members would have to show that coverage was denied for a service related to a switched code. Third, it found that class members would have to show that the codes were switched by LabCorp, and not by another party such as by a doctor in a subsequent order. Fourth, the court found that each class member would have to show that insurance coverage was denied because the codes were switched and not for some other reason. And lastly, it found that each class member would have to show that he or she suffered a financial burden by having paid out-of-pocket costs as a result of the denied coverage. In reaching these findings, the court was entitled to credit LabCorp's evidence over Jansky's. (*Mies, supra*, 234 Cal.App.4th at p. 981.)

Contrary to Jansky's argument otherwise, the resolution of these issues would be necessary to prove liability, not just damages. Even if the class had been certified, and even if LabCorp's code-switching practice was subsequently determined to be illegal, class members would only be able to recover under Jansky's theory of the case if they also established that: (1) their codes had been switched, (2) LabCorp, and not their doctor or another party, was responsible for the switch, (3) insurance coverage was denied, (4) the denied coverage was for a service related to a switched code, (5) the coverage was denied because the codes were switched and not because of a policy provision or for some other reason, and (6) they paid out-of-pocket costs as a result of having been denied coverage. Resolving these issues would entail far more than simply

requiring each class member to “make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages.” (*Sav-On, supra*, 34 Cal.4th at p. 333.)

These additional issues are numerous and substantial, and we therefore cannot conclude as a matter of law that the trial court abused its discretion in determining that, all told, the costs and problems of resolving these issues in a class proceeding outweighed the potential benefits.⁹

D. The Trial Court Did Not Abuse Its Discretion in Overruling Jansky’s Objections to Professor Baker’s Declaration.

Jansky also argues that the trial court erred in relying on Professor Baker’s declaration in denying class certification. We are not persuaded.

LabCorp submitted Professor Baker’s declaration when it opposed Jansky’s motion for class certification. Jansky objected to the declaration because, among other reasons, it failed to include a statement verifying that the signature had been signed under penalty of perjury under California law. LabCorp then filed a notice of errata explaining that the verification language had been inadvertently omitted and with the notice filed a revised declaration that included the proper verification language. After the revised declaration was filed, a hearing on the parties’ cross evidentiary objections was held. The court overruled most of those objections, including all of the objections to Professor Baker’s declaration.

Jansky argues that Professor Baker’s revised declaration “should never have been considered.” Before turning to the merits of this argument, we first reject LabCorp’s contention that Jansky failed to preserve her objection by not asserting it below. At the hearing on the evidentiary objections, Jansky’s counsel stated, “I know defendants

⁹ In light of this conclusion, we need not resolve two other issues briefed by the parties. First, we need not consider Jansky’s arguments that the trial court erroneously denied class certification as to the non-CLRA claims on alternative grounds (i.e., that the proposed classes were not adequately ascertainable and that class treatment would not be a superior method of resolving the dispute). Second, we need not review the court’s refusal to certify the third proposed class—the debt-collection class—because its membership was contingent on the viability of the first two classes.

submitted an errata. As we laid out, they weren't compliant with the Code of Civil Procedure. . . . So we haven't withdrawn those objections." In our view, this colloquy adequately preserved Jansky's objection to the revised declaration.

Nonetheless, we reject Jansky's objection on its merits. The trial court's overruling of all specific evidentiary objections to the declaration was tantamount to a rejection of Jansky's objection to the filing of the revised declaration. Jansky's reliance on *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601 is therefore misplaced. In *Kulshrestha*, our state Supreme Court concluded that an out-of-state declaration was inadmissible as evidence because it was not signed under penalty of perjury under the laws of California. (*Id.* at p. 618.) *Kulshrestha* might have relevance here if LabCorp was relying only on Professor Baker's original declaration and had not filed a revised declaration. But LabCorp *did* file a revised declaration, and we can find no reason why the court was precluded from accepting it. A trial court's evidentiary ruling " 'will not be disturbed . . . unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 919; *see also* Evid. Code, § 353, subd. (b).) Furthermore, Jansky has wholly failed to demonstrate how she was prejudiced by the court's acceptance of the revised declaration. (See *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1204.)

Jansky also argues that Professor Baker's declaration, even if properly admitted, did not constitute substantial evidence in support of the trial court's findings. But this argument is premised entirely on the assertion that the declaration "primarily concerns the potential *impacts* of [LabCorp's] code changing practice." As we have already concluded, the potential impacts of the code-switching practice are perfectly relevant to the class-certification analysis under Jansky's theory of this case. In short, Professor Baker's discussion of these potential impacts in his declaration was relevant evidence, and the trial court was not required to reject it in reaching its findings.

III.
DISPOSITION

The judgment is affirmed. Costs are awarded to respondents.

Humes, P.J.

We concur:

Margulies, J.

Banke, J.