

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C.P., by and through his parents, Patricia Pritchard and Nolle Pritchard, individually and on behalf of others similarly situated; and PATRICIA PRITCHARD,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,

Defendant.

NO. 3:20-cv-06145-RJB

JOINT RESPONSE TO THE PENDING PLACEHOLDER MOTIONS TO SEAL-REDACT (DKT. NOS. 77, 95, 102)

**Note on Motion Calendar:
December 9, 2022**

Pursuant to Local Civil Rule 5(g), and with the agreement of counsel for Defendant BCBSIL, Plaintiff files this Motion to Seal/Redact so that the parties who seek to seal/redact confidential information may satisfy the requirements of LCR 5(g)(3)(B) in its responsive briefing.

The parties' counsel have met and conferred to determine if they could reach agreement regarding the documents filed under seal pursuant to Dkt. Nos. 77, 95 and 102. Consistent with the representations in Dkt. Nos. 77, 95 and 102, the parties do not object and therefore agree that the documents below should be handled as follows:

Placeholder Dkt. No.	Sealed Dkt. No.	Name of document	Remain Sealed With Redacted Version Submitted to the Public File	Unsealed in Full
	78	Plaintiff C.P.'S Motion for Class Certification		X
84-1	85	Ex. A to Hamburger Decl. re Class Cert. (Reed Dep. Excerpts)		X
84-2	85-1	Ex. B to Hamburger Decl. re Class Cert. (Larson Dep. Excerpts)		X
84-3	85-2	Ex. C to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 6)		X
84-4	85-3	Ex. D to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 31)		X
84-5	85-4	Ex. E to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 32)	X	
84-6	85-5	Ex. F to Hamburger Decl. re Class Cert. (Drake Dep. Excerpts)		X
84-7	85-6	Ex. G to Hamburger Decl. re Class Cert. (Reed 30(b)(6) Dep. Ex. 33)	X	
84-8	85-7	Ex. H to Hamburger Decl. re Class Cert. (Drake 30(b)(6) Dep. Ex. 40)		X
84-9	85-8	Ex. I to Hamburger Decl. re Class Cert. (Malec Dep. Excerpts)		X

1	84-12	85-9	Ex. L to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 34)		X
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3	84-15	85-10	Ex. O to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 3)		X
4					
5	84-17	85-11	Ex. Q to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 46)		X
6					
7					
8	97-1	98	Ex. 1 to Hamburger Decl. re S.J. motions (Drake Dep. Excerpts)		X
9					
10	97-6	98-1	Ex. 6 to Hamburger Decl. re S.J. motions (Ettner Expert Report)	X	
11					
12	97-7	98-2	Ex. 7 to Hamburger Decl. (Karasic Expert Report)	X	
13					
14	97-8	98-3	Ex. 8 to Hamburger Decl. (Schechter Expert Report)		X
15					
16	97-10	98-4	Ex. 10 to Hamburger Decl. (Reed Dep. Excerpts)		X
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18		99	Plaintiff C.P.'S Reply in Support of Motion for Class Certification and Subjoined Motion to Strike Expert Report of Scott Carr		X
19					
20	100-4	101	Ex. 4 to Hamburger Decl. re Reply iso Class Cert.		X
21					
22	100-5	101-1	Ex. 5 to Hamburger Decl. re Reply iso Class Cert.		X
23					
24		103	BCBSIL's Motion to Exclude Plaintiffs' Experts under <i>Daubert</i>		X
25					
26					

1	104-1 at 4-5	105	Ex. B to Payton Decl.re Motion to Exclude (Ettner Expert Report)	X	
2					
3	104-1 at 135-137	105-1	Ex. E to Payton Decl. re Motion to Exclude (Karasic Expert Report)	X	
4					
5	108-15	109	Ex. 15 to Hamburger Decl. re C.P.'s Motion to Exclude Expert Testimony (Reed Dep. Excerpts)		X
6					
7					

8 Specifically, the parties agree and stipulate that there is a compelling privacy interest in
9 narrowly redacting the name, date of birth and other personal identifying information related to
10 the minor named plaintiff C.P., consistent with the requirements of Local Civil Rule 5.2 and C.P.'s
11 medical right to privacy. *See Thoma v. City of Spokane*, 2013 U.S. Dist. LEXIS 48562, at *8
12 (E.D. Wash. Apr. 3, 2013). *See* Dkt. Nos. 97-6, 97-7, 104-1, *Exh. B*, 104-1, *Exh. E*.

13 Moreover, BCBSIL asserts and the Plaintiff Class does not dispute that there is a
14 compelling interest in redacting certain limited exhibits pertaining to BCBSIL's medical policy
15 committee meeting minutes, which contain confidential and proprietary information discussed by
16 internal BCBSIL committees and reveal BCBSIL's confidential decision-making processes. This
17 confidential information, which is not publicly available, contains "sources of business
18 information that might harm [BCBSIL's] competitive standing." *Nixon v. Warner*
19 *Communications, Inc.*, 435 U.S. 589, 598 (1978) (holding that a party may overcome the
20 presumption in favor of public access to judicial records by demonstrating the pages contain
21 "business information that might harm a litigant's competitive standing"); *see also Carpenter v.*
22 *United States*, 484 U.S. 19, 26 (1987) ("Confidential business information has long been
23 recognized as property."). The risk of competitive harm is widely accepted as a compelling reason
24 to grant a motion to seal. *See e.g., Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,
25 1097 (9th Cir. 2016) (determining the release of a document that may harm a litigant's competitive
26

1 standing is a compelling reason to seal a document); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727
2 F.3d 1214, 1221-22 (Fed. Cir. 2013) (concluding on factor supporting sealing a document is when
3 the release of the document will cause competitive harm to a business).

4 The information is competitively sensitive because BCBSIL competes with other
5 companies offering third-party administrative services payors for the business of the ERISA self-
6 funded groups. BCBSIL's competitors would gain an unfair advantage if they learned details
7 regarding the details of BCBSIL's internal processes and decisions made by BCBSIL committees,
8 which play a non-public decision-making role.

9 Based upon the foregoing, the parties stipulate that the Court should issue an order
10 regarding the sealing and redaction of the listed documents, as described in the proposed order.

11 DATED: December 5, 2022.

12 KILPATRICK TOWNSEND & STOCKTON LLP

13 /s/ Gwendolyn C. Payton

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21 *Counsel for Blue Cross Blue Shield of Illinois*

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23 SPOONEMORE HAMBURGER PLLC

24 /s/ Eleanor Hamburger

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Attorneys for Plaintiffs

The Honorable Robert J. Bryan

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[PROPOSED] ORDER RE:
MOTIONS TO SEAL/REDACT
PURSUANT TO LOCAL CIVIL RULE 5(g)
(DKT. NOS. 77, 95, 102)

**Note on Motion Calendar:
December 9, 2022**

This matter came before the Court on the parties' Placeholder Motions to Seal/Redact filed at Dkt. Nos. 77, 95, 102. Plaintiffs C.P., by and through his parents, Patricia Pritchard and Nolle Pritchard, were represented by Eleanor Hamburger, Daniel Gross and Richard E. Spoonemore of Sirianni Youtz Spoonemore Hamburger PLLC, and Omar Gonzalez-Pagan and Jennifer C. Pizer of Lambda Legal Defense and Education Fund, Inc. Defendant Blue Cross Blue Shield of Illinois was represented by its counsel, Gwendolyn C. Payton, Stephanie Bedard and John R. Neeleman of Kilpatrick Townsend & Stockton LLP.

The Court reviewed and considered the pleadings and record herein, including:

- Plaintiffs' Placeholder Motions to Seal-Redact (Dkt. No. 77, 95)

- 1 • The Parties’ Agreed Motion to Seal-Redact Daubert Motions (Dkt. No. 102)
- 2 • The Parties’ Joint Response to the Pending Placeholder Motions to Seal-Redact
- 3 • Each party’s reply briefing, if any; and
- 4 • _____
- 5 • _____.

6 Based upon the foregoing, and for good cause shown, the Court ORDERS the following
7 documents to be remain sealed with the proffered redacted version filed in the public record, or
8 unsealed in full [check appropriate box].

9 Specifically, the Court concludes that there is a compelling privacy interest in narrowly
10 redacting the name, date of birth and other personal identifying information related to the minor
11 named plaintiff C.P., consistent with the requirements of Local Civil Rule 5.2 and C.P.’s medical
12 right to privacy. *See Thoma v. City of Spokane*, 2013 U.S. Dist. LEXIS 48562, at *8 (E.D. Wash.
13 Apr. 3, 2013). *See* Dkt. Nos. 97-6, 97-7, 97-8.

14 The Court also finds there is a compelling interest in redacting certain limited exhibits
15 pertaining to BCBSIL’s medical policy committee meeting minutes, which contain confidential
16 and proprietary information discussed by internal BCBSIL committees and reveal BCBSIL’s
17 confidential decision-making processes. This confidential information, which is not publicly
18 available, contains “sources of business information that might harm [BCBSIL’s] competitive
19 standing.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (holding that a party
20 may overcome the presumption in favor of public access to judicial records by demonstrating the
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22 *Carpenter v. United States*, 484 U.S. 19, 26 (1987) (“Confidential business information has long
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97-6	98-1	Ex. 6 to Hamburger Decl. re S.J. motions (Ettner Expert Report)	X	
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