

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

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. Nos. 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 (Dkt.
- 3 No. 132)

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

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

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

1 *Co., Ltd.*, 727 F.3d 1214, 1221-22 (Fed. Cir. 2013) (concluding on factor supporting sealing a
2 document is when the release of the document will cause competitive harm to a business).

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

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	

Placeholder Dkt. No.	Sealed Dkt. No.	Name of document	Remain Sealed With Redacted Version Submitted to the Public File	Unsealed in Full
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
84-12	85-9	Ex. L to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 34)		X
84-15	85-10	Ex. O to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 3)		X
84-17	85-11	Ex. Q to Hamburger Decl. re Class Cert. (Rule 30(b)(6) Dep. Ex. 46)		X
97-1	98	Ex. 1 to Hamburger Decl. re S.J. motions (Drake Dep. Excerpts)		X
97-6	98-1	Ex. 6 to Hamburger Decl. re S.J. motions (Ettner Expert Report)	X	
97-7	98-2	Ex. 7 to Hamburger Decl. (Karasic Expert Report)	X	

Placeholder Dkt. No.	Sealed Dkt. No.	Name of document	Remain Sealed With Redacted Version Submitted to the Public File	Unsealed in Full
97-8	98-3	Ex. 8 to Hamburger Decl. (Schechter Expert Report)		X
97-10	98-4	Ex. 10 to Hamburger Decl. (Reed Dep. Excerpts)		X
	99	Plaintiff C.P.'S Reply in Support of Motion for Class Certification and Subjoined Motion to Strike Expert Report of Scott Carr		X
100-4	101	Ex. 4 to Hamburger Decl. re Reply iso Class Cert.		X
100-5	101-1	Ex. 5 to Hamburger Decl. re Reply iso Class Cert.		X
	103	BCBSIL's Motion to Exclude Plaintiffs' Experts under <i>Daubert</i>		X
104-1 at 4-5	105	Ex. B to Payton Decl.re Motion to Exclude (Ettner Expert Report)	X	
104-1 at 135-137	105-1	Ex. E to Payton Decl. re Motion to Exclude (Karasic Expert Report)	X	
108-15	109	Ex. 15 to Hamburger Decl. re C.P.'s Motion to Exclude Expert Testimony (Reed Dep. Excerpts)		X

1 DATED this 6th day of December, 2022.

2
3 

4 ROBERT J. BRYAN
5 United States District Judge

6 Presented by:

7 SIRIANNI YOUTZ
8 SPOONEMORE HAMBURGER PLLC

9 /s/ Eleanor Hamburger

10 Eleanor Hamburger (WSBA # 26478)
11 Daniel S. Gross (WSBA #23992)

12 LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

13 /s/ Jennifer C. Pizer

14 Omar Gonzalez-Pagan, *pro hac vice*
15 Jennifer C. Pizer, *pro hac vice*

16 Attorneys for Plaintiffs

17 Approved for entry:

18 KILPATRICK TOWNSEND
19 & STOCKTON LLP

20 /s/ Stephanie N. Bedard

21 Gwendolyn C. Payton (WSBA #26752)
22 John R. Neeleman (WSBA #19752)
23 Stephanie N. Bedard, *pro hac vice*

24 Attorneys for Defendant
25 Blue Cross Blue Shield of Illinois