

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; and  
PATRICIA PRITCHARD,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,  
Defendant.

NO. 3:20-cv-06145-RJB

PLAINTIFFS' MOTION FOR LEAVE  
TO FILE AMENDED COMPLAINT

Noted for Consideration:  
October 1, 2021

**I. INTRODUCTION / RELIEF REQUESTED**

Plaintiffs move for leave to file the proposed Amended Complaint, attached in redline format to this Motion as *Appendix A*, pursuant to Fed. R. Civ. P. 15(a)(2) and LCR 15.

**II. FACTS**

**A. Procedural History**

This lawsuit was filed on November 23, 2020. Dkt. No. 1. By agreement of the parties, the deadline for Defendant Blue Cross Blue Shield of Illinois ("BCBSIL") to respond to the Complaint was extended to February 25, 2021. Dkt. Nos. 7, 12.

On February 25, 2021, BCBSIL filed a Motion to Dismiss. Dkt. No. 17. The motion was fully briefed, and on May 4, 2021, the Court denied the Motion. Dkt. No. 23.

1 Defendant has not yet answered the Complaint and has not served any discovery on  
2 Plaintiffs.

3 **B. Proposed Amended Complaint**

4 The proposed Amended Complaint merely converts this individual case into a  
5 class action lawsuit seeking injunctive and declaratory relief for similarly situated  
6 individuals to C.P. It adds no new claims or any new factual allegations related to the  
7 named plaintiffs. The amendment is necessary to ensure that any judicial determination  
8 as to C.P.'s rights to coverage to medically necessary treatment for his gender dysphoria  
9 without discrimination on the basis of sex will be applied to all similarly situated  
10 individuals in plans administered by BCBSIL.

11 **III. ARGUMENT**

12 Federal Rule of Civil Procedure 15(a)(2) provides that a court "should freely give  
13 leave" to amend a pleading before trial "when justice so requires." The Ninth Circuit has  
14 held that "[t]his policy is to be applied with extreme liberality." *Hoang v. Bank of Am.,*  
15 *N.A.*, 910 F.3d 1096, 1102 (9th Cir. 2018) (internal quotes omitted). The district court's  
16 discretion to grant leave to amend "should be guided by the underlying purpose of  
17 Rule 15(a) ... which was to facilitate decisions on the merits, rather than on technicalities  
18 or pleadings." *In re Morris*, 363 F.3d 891, 894 (9th Cir. 2004) (internal quotes omitted).  
19 "Courts may decline to grant leave to amend only if there is strong evidence of undue  
20 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure  
21 deficiencies by amendments previously allowed, undue prejudice to the opposing party  
22 ..., [or] futility of amendment." *Sonoma Cty. Ass'n of Retired Emps. v. Sonoma Cty.*, 708  
23 F.3d 1109, 1117 (9th Cir. 2013) (internal quotes omitted).

24 In light of recent developments, Plaintiffs seek leave to file an Amended  
25 Complaint in order to include allegations on behalf of a nationwide class of individuals

1 who are similarly situated to C.P. What is more, none of the circumstances that might  
2 weigh against granting leave to amend are present here.

3 First, there is no prejudice to BCBSIL. Although this case was filed in November  
4 2020, it is still at the pleadings stage, since BCBSIL has yet to serve an Answer. *Cf.* Fed.  
5 R. Civ. Proc. 15(a)(2) (providing for amendment as a matter of course “if the pleading is  
6 one to which a responsive pleading is required, 21 days after service of a responsive  
7 pleading”).<sup>1</sup>

8 Second, no substantive changes are proposed apart from making this case a class  
9 action. The underlying claim remains the same as addressed by this Court on its decision  
10 denying BCBSIL’s motion to dismiss. *See* Dkt. 23. Furthermore, the original Complaint  
11 made clear to Defendant that the injunctive and declaratory relief sought to cure the civil  
12 rights violation alleged here extends to all individuals who are similarly situated to C.P.  
13 *See* Dkt. 1. Certification of a class would simply provide an additional and independent  
14 basis for this Court to afford such relief. To the extent BCBSIL needs more time to fashion  
15 its Answer (which it has yet to file) in light of this amendment, Plaintiffs do not object to  
16 a reasonable extension.

17 Third, Plaintiffs did not delay in making this amendment. Again, Plaintiffs  
18 assumed that, consistent with ERISA fiduciary duties, BCBSIL would change its practice  
19 as to all similarly situated individuals once this matter was adjudicated as to C.P.,  
20 without the need to file a class action lawsuit. In recent discussions with BCBSIL’s  
21 counsel, it became clear that such a change in practice might not occur without the  
22

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23  
24 <sup>1</sup> Local Civil Rule 23(i) provides that a plaintiff shall move for class certification within 180 days after  
25 the filing of a complaint in a class action. Although the original Complaint was filed in November 2020, it  
26 was not styled as a class action, and Plaintiffs would therefore propose that, following the Court’s  
disposition of this motion, the parties meet and confer regarding a proposed schedule on the merits and,  
as appropriate, class certification.

1 certification of a class. *See* Hamburger Decl., ¶2. Accordingly, Plaintiffs have moved in a  
2 timely manner to amend the complaint to include class allegations and seek class-wide  
3 relief.

4 Fourth, there is no basis for denying leave to amend on grounds of purported  
5 futility. To the extent that Defendant opposes class certification here, that issue can be  
6 more directly, fully, and fairly litigated in the context of a motion for class certification,  
7 rather than in the context of a motion for leave to file an amended complaint.

8 Finally, Rule 23 was amended “in 1966 to enable structural reform and broad  
9 remedial relief” and “was designed to enhance civil rights enforcement.” Suzette M.  
10 Malveaux, *The Modern Class Action Rule: Its Civil Rights Roots and Relevance Today*, 66 U.  
11 KAN. L. REV. 325, 327 (2017). Thus, Plaintiffs believe that class certification is  
12 appropriate in this civil rights case.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, Plaintiffs’ Motion for Leave to File the Amended  
15 Complaint should be granted, and Plaintiffs should be directed to submit the Amended  
16 Complaint, attached as *Appendix A* to the instant Motion. The original appendices  
17 remain the same and will be re-filed when Plaintiffs are authorized to file the Amended  
18 Complaint.

19 DATED: September 10, 2021.

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# Appendix A

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; and  
PATRICIA PRITCHARD,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,  
Defendant.

~~NO.~~

No. 3:20-cv-06145-RJB

**AMENDED COMPLAINT**

**(CLASS ACTION)**

**I. INTRODUCTION**

1. The Affordable Care Act (“ACA”) prohibits discrimination on the basis of sex in health care. This includes the administration, application, and enforcement of any exclusions of gender affirming care by health insurance companies and claims administrators that receive federal financial assistance and participate in health care insurance marketplaces established under the ACA.

2. As a health insurance company and claims administrator, Blue Cross Blue Shield of Illinois (“BCBSIL”) participates in the health care insurance marketplaces and administers dozens of employer-provided benefit plans across the United States. In doing so, and notwithstanding its legal obligation to not discriminate on the basis of sex

1 pursuant to Section 1557 of the ACA, BCBSIL administers and enforces plan exclusions  
2 of gender affirming care that deprive transgender people of essential, and sometimes  
3 lifesaving, health care. These exclusions, like the one applied to Plaintiffs, facially, and  
4 categorically, exclude coverage for gender affirming health care that transgender people  
5 may require, including but not limited to counseling, hormone replacement therapy, and  
6 surgical care.

7 1.3. Plaintiffs are a fifteen-year-old transgender boy (C.P.) and his mother  
8 (Patricia Pritchard) who are being discriminated against on the basis of sex because  
9 Plaintiff C.P. is transgender.

10 2.4. As part of the compensation for her employment, Plaintiff Patricia  
11 Pritchard receives health care coverage through the Catholic Health Initiatives Medical  
12 Plan (“Plan”), which is administered by ~~Blue Cross Blue Shield of Illinois (“BCBSIL”)~~.  
13 Plaintiff C.P. is enrolled in such Plan as a dependent of Ms. Pritchard.

14 ~~3.— Defendant BCBSIL is a “covered health entity” subject to Section 1557 of~~  
15 ~~the Affordable Care Act (“ACA”). As a result, it may not discriminate on the basis of sex~~  
16 ~~in the administration of health benefits. See 42 U.S.C. § 18116(a).~~

17 4.5. ~~Notwithstanding this requirement,~~ BCBSIL administers the Plan according  
18 to its terms and in a manner that deprives transgender enrollees of coverage for  
19 medically- necessary gender affirming care, i.e. medically necessary treatment of gender  
20 dysphoria ~~—the clinically significant distress that can result from the dissonance between~~  
21 ~~an individual’s gender identity and sex assigned at birth.~~

22 5.6. Specifically, at the time BCBSIL denied coverage for C.P.’s treatment, the  
23 terms of the Plan stated:

24 *Transgender Reassignment Surgery*

25 Not Covered:

Benefits shall not be provided for treatment, drugs, medicines, therapy, counseling services and supplies for, or leading to, gender reassignment surgery.

*App. A*, p. 61 (emphasis in original) (hereinafter referred to as the “Exclusion”).

6.7. The sweeping exclusion contained within the Plan, and those likely contained within other plans administered by BCBSIL, denies coverage for gender-affirming health care, including surgical care, and other health care provided in relation to a person’s transgender status and/or gender transition, if BCBSIL determines that the care is provided “for or leading to gender reassignment surgery.” ~~In practice, in C.P.’s case, BCBSIL has denied coverage for C.P.’s surgical care including the implantation of his second Vantas implant, mastectomy and chest reconstruction.~~

7.8. ~~The Exclusion contravenes~~ Such exclusions contravene the well-established medical consensus that gender-affirming health care can be medically necessary and even life-saving. Other Plan enrollees who are not transgender do not face a categorical exclusion barring coverage for health care that is medically necessary for them based on their sex and receive coverage for the same care that is denied to transgender enrollees.

8.9. Plaintiffs have been denied coverage for medically necessary gender affirming health care because C.P. is transgender, based on the Exclusion of gender-affirming health care in the Plan. Plaintiffs have been forced to incur financial hardship without the financial protection afforded by coverage through the Plan. Plaintiffs have also suffered emotional distress, stigmatization, humiliation, and a loss of dignity because of the Plan’s targeted discrimination against transgender enrollees, which wrongly deems their health care needs as unworthy of equal coverage.

9.10. This targeted discrimination against transgender people, which BCBSIL administers and enforces, violates the ACA’s Section 1557.

10.11. Plaintiffs bring this lawsuit ~~to challenge on behalf of themselves and a proposed class of similarly situated individuals for declaratory and injunctive relief~~

1 preventing BCBSIL's administration of, application, and enforcement of any exclusions,  
 2 such as the Plan's Exclusion despite the non-discrimination requirements of Section 1557  
 3 and, that deny coverage for gender affirming health care, including counseling,  
 4 hormone replacement therapy, surgical care, and any other health care provided in  
 5 relation to a person's transgender status and/or gender transition. Plaintiffs bring this  
 6 lawsuit to obtain a judgment to redress remedy their individual injuries and that of the  
 7 proposed class and to have the exclusion administration of such exclusions declared  
 8 unlawful, thereby preventing its enforcement their enforcement by BCBSIL. Plaintiffs  
 9 also seek damages for their own individual injuries resulting from BCBSIL's  
 10 discriminatory administration of the Plan.

## 11 II. PARTIES

12 11-12. Plaintiff C.P. Plaintiff C.P. is a fifteen-year-old transgender boy who is  
 13 enrolled in the Plan, a health plan administered by BCBSIL. C.P. brings suit by and  
 14 through his next friends and parents, Patricia Pritchard and Nolle Pritchard.

15 12-13. Plaintiff Patricia Pritchard. Plaintiff Patricia Pritchard is the mother of  
 16 C.P. She is employed at St. Michael Medical Center in Bremerton, Washington, which is  
 17 part of the Catholic Health Initiatives Franciscan Health System, ("CHI"), now known  
 18 as CommonSpirit Health. As part of her employment, Ms. Pritchard receives health  
 19 coverage through the Plan, as administered by BCBSIL. C.P. receives health coverage  
 20 through the Plan as a dependent of Ms. Pritchard. Ms. Pritchard and C.P. live in  
 21 Bremerton, Washington.

22 13-14. Blue Cross Blue Shield of Illinois. Defendant Blue Cross Blue Shield of  
 23 Illinois (BCBSIL) is a health insurance company and claims administrator. BCBSIL is a  
 24 recipient of federal financial assistance and participates in health care insurance  
 25 marketplaces established under the ACA. BCBSIL is the claims administrator of the  
 26

1 Plan's schedule of benefits in which Plaintiff C.P. is enrolled as a dependent of Ms.  
2 Pritchard. BCBSIL is a division of Health Care Service Corporation, a mutual legal  
3 reserve company headquartered in Chicago Illinois. Defendant BCBSIL is not a religious  
4 organization. ~~BCBSIL is a recipient of federal financial assistance and participates in~~  
5 ~~health care insurance marketplaces established under the Patient Protection and~~  
6 ~~Affordable Care Act ("Affordable Care Act" or "ACA").~~

### 7 III. JURISDICTION AND VENUE

8 14-15. This action arises under Section 1557 of the Patient Protection and  
9 Affordable Care Act, 42 U.S.C. § 18116.

10 15-16. This Court has original jurisdiction over the subject matter of this action  
11 pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the  
12 Constitution and laws of the United States.

13 16-17. Declaratory relief is authorized by Rules 57 and 65 of the Federal Rules of  
14 Civil Procedure, and by 28 U.S.C. §§ 2201 and 2202.

15 17-18. Venue is proper under 28 U.S.C. § 1391(b)(2), because, *inter alia*, a  
16 substantial part of the events giving rise to the claim occurred in Kitsap County.

17 18-19. The Court has personal jurisdiction over Defendant BCBSIL because by  
18 agreeing to administer the Plan, which covers residents of the State of Washington,  
19 BCBSIL has knowingly and deliberately engaged in significant activities within the State  
20 of Washington and has created continuing obligations between itself and residents of the  
21 this forum.

### 22 IV. FACTUAL BACKGROUND

#### 23 *Gender Dysphoria and Its Treatment*

24 19-20. Every individual's sex is multifaceted, and comprised of a number of  
25 characteristics, including but not limited to chromosomal makeup, hormones, internal  
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1 and external reproductive organs, secondary sex characteristics, and most importantly,  
2 gender identity.

3 20-21. Gender identity is a person's internal sense of their sex. It is an essential  
4 element of human identity that everyone possesses, and a well-established concept in  
5 medicine. Gender identity is innate, immutable, and has biological underpinnings.

6 21-22. For everyone, gender identity is the most important determinant of a  
7 person's sex and a fundamental component of human identity.

8 22-23. A person's sex is generally assigned at birth based solely on a visual  
9 assessment of external genitalia at the time of birth. External genitalia are only one of  
10 several sex-related characteristics and are not always indicative of a person's sex.

11 23-24. For most people, these sex-related characteristics are all aligned, and the  
12 visual assessment performed at birth serves as an accurate proxy for that person's  
13 gender.

14 24-25. Where a person's gender identity does not match that person's sex  
15 assigned at birth, however, gender identity is the critical determinant of that person's  
16 sex.

17 25-26. The ability to live in a manner consistent with one's gender identity is vital  
18 to the health and wellbeing of transgender people.

19 26-27. For transgender people, an incongruence between their gender identity  
20 and sex assigned at birth can result in a feeling of clinically significant stress and  
21 discomfort known as gender dysphoria.

22 27-28. Gender dysphoria is a serious medical condition recognized in the  
23 American Psychiatric Association's Diagnostic and Statistical Manual of Mental  
24 Disorders, Fifth Edition ("DSM-5"); the World Health Organization's International  
25 Classification of Diseases, which is the diagnostic and coding compendia for medical  
26

1 professionals; and by other leading medical and mental health professional groups,  
2 including the American Medical Association (“AMA”) and the American Psychological  
3 Association (“APA”). The criteria for diagnosing gender dysphoria are set forth in the  
4 DSM-5 (302.85).

5 28-29. In addition to clinically significant distress, untreated gender dysphoria  
6 can result in severe anxiety, depression, or even suicidality.

7 29-30. Untreated gender dysphoria often intensifies with time. The longer an  
8 individual goes without or is denied adequate treatment for gender dysphoria, the  
9 greater the risk of severe harms to the individual’s health.

10 30-31. Gender dysphoria can be treated in accordance with internationally  
11 recognized Standards of Care formulated by the World Professional Association for  
12 Transgender Health (“WPATH”). WPATH is an international, multidisciplinary,  
13 professional association whose mission is to promote evidence-based health care  
14 protocols for transgender people. WPATH publishes Standards of Care that are based  
15 on the best available science and expert professional consensus, and which are widely  
16 accepted as best practices for treating gender dysphoria.

17 31-32. Under the WPATH Standards of Care, medically necessary treatments  
18 may include, among other things, “[h]ormone therapy” and “[s]urgery to change  
19 primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or  
20 internal genitalia, facial features, body contouring).”

21 32-33. The Standards of Care are recognized as authoritative by national medical  
22 and behavioral health organizations such as the AMA and APA, which have both called  
23 for an end to exclusions of gender-affirming care from health insurance and health  
24 benefit plans.

1           33-34. The individualized steps that many transgender people take to live in a  
2 manner consistent with their gender, rather than the sex they were assigned at birth, are  
3 known as transitioning.

4           34-35. Transitioning is particular to the individual but typically includes social,  
5 legal, and medical transition.

6           35-36. Social transition entails a transgender individual living in accordance with  
7 their gender identity in all aspects of life. For example, social transition can include  
8 wearing attire, following grooming practices, and using pronouns consistent with that  
9 person's gender identity. The steps a transgender person can take as part of their social  
10 transition help align their gender identity with all aspects of everyday life.

11           36-37. Legal transition involves steps to formally align a transgender individual's  
12 legal identity with their gender identity, such as legally changing one's name and  
13 updating the name and gender marker on their driver's license, birth certificate, and  
14 other forms of identification.

15           37-38. Medical transition, a critical part of transitioning for many transgender  
16 people, includes gender-affirming care that bring the sex-specific characteristics of a  
17 transgender person's body into alignment with their gender. Gender-affirming care can  
18 involve counseling to obtain a diagnosis of gender dysphoria, hormone replacement  
19 therapy, surgical care, or other medically necessary treatments for gender dysphoria.

20           38-39. Hormone replacement therapy involves taking hormones for the purpose  
21 of bringing one's secondary sex characteristics into typical alignment with one's gender  
22 identity. Secondary sex characteristics are bodily features not associated with external  
23 and internal reproductive genitalia (primary sex characteristics). Secondary sex  
24 characteristics include, for example, hair growth patterns, body fat distribution, and  
25 muscle mass development. Hormone replacement therapy can have significant  
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1 masculinizing or feminizing effects and can assist in bringing a transgender individual's  
2 secondary sex characteristics into alignment with their true sex, as determined by their  
3 gender identity, and therefore is medically necessary care for transgender people who  
4 need it to treat their gender dysphoria.

5 39-40. Gender-affirming surgical care might be sought by a transgender person  
6 to better align primary or secondary sex characteristics with their gender identity.  
7 Surgical care can include, but is not limited to, hysterectomies, gonadectomies,  
8 mammoplasties, mastectomies, orchiectomies, vaginoplasties, and phalloplasties. These  
9 treatments are for the purpose of treating gender dysphoria.

10 40-41. These various components associated with transition—social, legal, and  
11 medical transition—do not change an individual's sex, as that is already established by  
12 gender identity, but instead bring the individual's appearance, legal identity, and sex-  
13 related characteristics into greater alignment with the individual's gender identity and  
14 lived experience.

15 41-42. The consequences of untreated, or inadequately treated, gender dysphoria  
16 are dire. Symptoms of untreated gender dysphoria include intense emotional suffering,  
17 anxiety, depression, suicidality, and other attendant mental health issues. Untreated  
18 gender dysphoria is associated with higher levels of stigmatization, discrimination, and  
19 victimization, contributing to negative self-image and the inability to function effectively  
20 in daily life. When transgender people are provided with access to appropriate and  
21 individualized gender-affirming care in connection with treatment of gender dysphoria,  
22 these symptoms can be alleviated and even prevented.

23 42-43. The AMA, APA, American Psychiatric Association, Endocrine Society,  
24 American College of Obstetricians and Gynecologists, American Academy of Family  
25 Physicians, and other major medical organizations have recognized that gender-  
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1 affirming care is medically necessary, safe, and effective treatment for gender  
2 dysphoria—and that access to such treatment improves the health and well-being of  
3 transgender people. Each of these groups has publicly opposed exclusions of coverage  
4 of this treatment by private and public health care administrators and payors, like the  
5 Exclusion at issue here.

6 43-44. WPATH has stated that, like hormone replacement therapy and other  
7 gender-affirming treatments, the “medical procedures attendant to sex reassignment are  
8 not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient,” but instead are  
9 “medically necessary for the treatment of the diagnosed condition.” Nor are they  
10 experimental, because “decades of both clinical research and medical research show that  
11 they are essential to achieving well-being for the [transgender] patient.”

12 *BCBSIL’s Administration of Health Plans and Exclusions*

13 45. BCBSIL offers health care plans in the health care exchanges established  
14 under the ACA.

15 46. BCBSIL also administers health benefits plans for employer groups of  
16 various sizes across the United States, including for CHI.

17 47. . Upon information and belief, the Plan administered by BCBSIL on behalf  
18 of CHI alone has thousands of enrollees and beneficiaries.

19 48. Upon information and belief, other health benefit plans administered by  
20 BCBSIL may contain exclusions denying coverage for medically necessary gender  
21 affirming care, like the one described in paragraph 6 of this Amended Complaint, even  
22 though the same treatments are covered for cisgender plan enrollees and beneficiaries.

23 49. In 2008, the AMA passed Resolution 122 recognizing gender dysphoria  
24 (then known as gender identity disorder) as a “serious medical condition” which, “if left  
25 untreated, can result in clinically significant psychological distress, dysfunction,  
26

1 debilitating depression, and for some people without access to appropriate medical care  
2 and treatment, suicidality and death.” AMERICAN MED. ASS’N, Resolution 122: Removing  
3 Financial Barriers to Care for Transgender Patients (June 16, 2008). The AMA also opposes  
4 categorical exclusions of coverage for treatment of gender dysphoria because “many of  
5 these same treatments ... are often covered for other medical conditions” and “the denial  
6 of these otherwise covered benefits for patients suffering from [gender dysphoria]  
7 represents discrimination based solely on a patient’s gender identity.” *Id.*

8 50. In the past, public and private health administrators and payors excluded  
9 coverage for medically necessary treatment of gender dysphoria on the erroneous  
10 assumption that such treatments were cosmetic or experimental. Today, the medical  
11 consensus recognizes that exclusions of treatment for gender dysphoria on those  
12 grounds have no basis in medical science.

13 51. At all relevant times, BCBSIL was and remains a “health program or  
14 activity” part of which receives federal financial assistance. 42 U.S.C. § 18116. As a result,  
15 BCBSIL was and continues to be a “covered entity” under the Affordable Care Act,  
16 Section 1557.

17 52. BCBSIL provided assurances to the U.S. Department of Health and Human  
18 Services that it complies with the requirements of Section 1557. See 45 C.F.R. § 92.5.

19 53. BCBSIL also provided written assurances to C.P. and his parents that it  
20 would comply with the requirements of Section 1557. See *App. E*, p. 3; see also *Apps. F, K,*  
21 and *L* (same).

22 54. Despite these assurances, BCBSIL has administered the Plan’s Exclusion of  
23 all treatment that BCBSIL construes to be “for, or leading to, gender reassignment  
24 surgery.” BCBSIL continues to do so, to date.

*The Denial of Care to C.P.*

1 44-55. Plaintiff C.P. is a boy who is transgender. That means that he was assigned  
2 the sex of female at birth but his gender identity is male.

3 45-56. C.P.'s birth certificate, social security identification, and passport all  
4 identify him as male. C.P. has identified and lived as male since 2015.

5 46-57. C.P. has been diagnosed with gender dysphoria.

6 47-58. Although BCBSIL and the Plan have covered some of C.P.'s past treatment  
7 for gender dysphoria, including injected testosterone medication, treatment by Kevin  
8 Hatfield, M.D., C.P.'s primary care provider, as well as mental health counseling related  
9 to this condition, BCBSIL has denied coverage for some of C.P.'s medically-necessary  
10 gender-affirming medical care because it is "for or leading to gender reassignment  
11 surgery."

12 48-59. On October 14, 2016, BCBSIL initially approved C.P.'s request for  
13 preauthorization for a Vantas implant, which is a treatment to delay the onset of female  
14 puberty and was prescribed by Dr. Hatfield as medically-necessary to treat C.P.'s gender  
15 dysphoria.

16 49-60. On November 11, 2016, C.P. received the Vantas implant and sometime  
17 thereafter, payment for the services related to the implant was made by BCBSIL.

18 50-61. Despite the payment for services, on February 24, 2017, C.P.'s mother was  
19 told by a BCBSIL representative that coverage for the Vantas implant would be denied.

20 *App. B.*

21 51-62. On April 21, 2017, C.P.'s mother received a letter from BCBSIL which  
22 indicated that coverage was denied because "treatment for transgender services were  
23 [sic] allowed incorrectly under the medical plan." *App. C.*

24 52-63. On May 25, 2017, C.P.'s parents appealed the BCBSIL denial. *App. D.*  
25  
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1           53-64. On October 19, 2017, C.P.'s parents received a letter from BCBSIL  
2 indicating that the appeal had been received on June 2, 2017, and that a decision would  
3 be made within 15 calendar days, or June 17, 2017, a date that had long since passed.  
4 *App. E.*

5           54-65. No formal response from BCBSIL was received by C.P.'s parents until  
6 April 26, 2018, eleven months after the appeal was submitted. *App. F.* That letter denied  
7 coverage of the service because BCBSIL took the position that it was a "service related to  
8 gender-reassignment" and was therefore excluded under the Plan. However, BCBSIL  
9 indicated that it would not "clawback" the payments already made to C.P.'s providers  
10 related to the Vantas implant.

11           55-66. In 2017, the Plan did not include an exclusion of coverage for "gender-  
12 reassignment" treatment or treatment for gender dysphoria.

13           56-67. Starting January 1, 2018, the Plan added an exclusion for gender-affirming  
14 treatment. *See App. A.*

15           57-68. BCBSIL administers and enforces the Plan Exclusion, denying coverage of  
16 medical care, treatment, and procedures when used to treat gender dysphoria even  
17 when such care, treatments, and procedures are medically necessary. BCBSIL applies the  
18 Exclusion even though it covers the same or similar procedures for other enrollees in the  
19 Plan.

20           58-69. BCBSIL applies and enforces the Exclusion even though BCBSIL has  
21 determined that it is illegal for BCBSIL to apply the same or similar Exclusion in its own  
22 insured health plans. *See, e.g., App. G.*

23           59-70. In 2018, C.P. was prescribed testosterone cream to treat his gender  
24 dysphoria.

1            ~~60-71.~~ After going through a lengthy appeals process, an attorney representing  
2 the Plan (*but not BCBSIL*) wrote to C.P.'s attorneys and indicated that the Plan's  
3 Exclusion was limited to only "gender reassignment surgery." *App. H*. Specifically, he  
4 represented that "[I]n 2019, the only 'transgender health service' specifically excluded  
5 under the Plan is gender reassignment surgery."

6            ~~61-72.~~ In July 2019, C.P. and his parents met with his treating physician, Dr.  
7 Hatfield, and his therapist, Sharon Booker, regarding C.P.'s need for a second Vantas  
8 implant and gender-affirming top surgery (specifically, chest reconstruction).

9            ~~62-73.~~ C.P.'s medical and mental health providers concluded that both  
10 procedures were medically necessary to treat his gender dysphoria. *Apps. I, J*.

11            ~~63-74.~~ Requests for pre-authorization for both procedures were submitted to  
12 BCBSIL, and both were denied. *Apps. K, L*.

13            ~~64-75.~~ C.P. proceeded to have the procedure for the second Vantas implant on  
14 November 6, 2019.

15            ~~65-76.~~ C.P. received chest reconstruction surgery on December 19, 2019.

16            ~~66-77.~~ On December 2, 2019, C.P. and his parents appealed the BCBSIL denial.  
17 *App. M*.

18            ~~67-78.~~ On December 23, 2019, BCBSIL issued a denial of the appeal, but claimed  
19 that "our prior response dated April 26, 2018 completed the internal appeal process that  
20 is available to you" even though the 2019 appeal filed by C.P.'s parents was for two  
21 different procedures and the relevant plan language had changed since the 2017 denial  
22 and appeal. *See App. N*.

23            ~~68-79.~~ After BCBSIL denied the appeal, it appears to have covered some of the  
24 cost of the medications related to the second Vantas implant, but not other related costs.

1 See *App. O*. BCBSIL also continued to deny coverage of nearly all treatment related to  
2 C.P.'s mastectomy and chest reconstruction.

3 ~~69.80.~~ BCBSIL has never claimed that C.P.'s treatment for his gender dysphoria  
4 is not medically necessary or is "experimental and investigational."

5 ~~70.1.~~ ~~In 2008, the AMA passed Resolution 122 recognizing gender dysphoria~~  
6 ~~(then known as gender identity disorder) as a "serious medical condition" which, "if left~~  
7 ~~untreated, can result in clinically significant psychological distress, dysfunction,~~  
8 ~~debilitating depression, and for some people without access to appropriate medical care~~  
9 ~~and treatment, suicidality and death." AMERICAN MED. ASS'N, Resolution 122: Removing~~  
10 ~~Financial Barriers to Care for Transgender Patients (June 16, 2008). The AMA also opposes~~  
11 ~~categorical exclusions of coverage for treatment of gender dysphoria because "many of~~  
12 ~~these same treatments ... are often covered for other medical conditions" and "the denial~~  
13 ~~of these otherwise covered benefits for patients suffering from [gender dysphoria]~~  
14 ~~represents discrimination based solely on a patient's gender identity." *Id.*~~

15 ~~71.1.~~ ~~In the past, public and private health administrators and payors excluded~~  
16 ~~coverage for medically necessary treatment of gender dysphoria on the erroneous~~  
17 ~~assumption that such treatments were cosmetic or experimental. Today, the medical~~  
18 ~~consensus recognizes that exclusions of treatment for gender dysphoria on those~~  
19 ~~grounds have no basis in medical science.~~

20 ~~72.1.~~ ~~At all relevant times, BCBSIL was a "health program or activity" part of~~  
21 ~~which receives federal financial assistance. 42 U.S.C. § 18116. As a result, BCBSIL was a~~  
22 ~~"covered entity" under the Affordable Care Act, Section 1557.~~

23 ~~73.1.~~ ~~BCBSIL provided assurances to the U.S. Department of Health and Human~~  
24 ~~Services that it complies with the requirements of Section 1557. See 45 C.F.R. § 92.5.~~

1 ~~74.1. BCBSIL also provided written assurances to C.P. and his parents that it~~  
2 ~~would comply with the requirements of Section 1557. See App. E, p. 3; see also Apps. F, K,~~  
3 ~~and L (same).~~

4 ~~75.1. Despite these assurances, BCBSIL has administered the Plan's Exclusion of~~  
5 ~~all treatment that BCBSIL construes to be "for, or leading to, gender reassignment~~  
6 ~~surgery." BCBSIL continues to do so, to date.~~

7 ~~76.81.~~ BCBSIL agreed to administer the Exclusion in the Plan for ~~Catholic Health~~  
8 ~~Initiatives/CommonSpirit Health~~CHI, even though BCBSIL knew that Plan enrollees  
9 with gender dysphoria needed medical treatment for their condition. It did so despite  
10 the non-discrimination assurances BCBSIL provided to the federal government and to  
11 the Plan's enrollees.

12 ~~77.82.~~ Based on information and belief, BCBSIL administered the Exclusion  
13 despite its own legal analysis that the Exclusion violates the Affordable Care Act's  
14 Section 1557.

15 ~~78.83.~~ BCBSIL has administered the Exclusion to deny coverage of medically  
16 necessary treatment for C.P., because the requested treatment would treat his gender  
17 dysphoria.

18 ~~79.84.~~ As a result of BCBSIL's deliberate discriminatory actions, C.P. has not  
19 received coverage of medically necessary treatment for his gender dysphoria and his  
20 parents have incurred over \$10,000 in out-of-pocket expenses.

21 ~~80.85.~~ C.P. and his parents anticipate that they will incur additional expenses  
22 related to his medically necessary treatment for gender dysphoria, if BCBSIL continues  
23 to administer and enforce the Plan's Exclusion.

24 ~~81.86.~~ BCBSIL's administration of the Exclusion denies transgender enrollees  
25 with gender dysphoria the benefits and health coverage available to other insureds. It is  
26

1 discrimination on the basis of sex, which includes discrimination on the basis of sex  
2 characteristics, gender identity, nonconformity with sex stereotypes, transgender status,  
3 and gender transition.

4 82-87. Plaintiff C.P. and his parents have appealed BCBSIL's denial of coverage  
5 for C.P.'s medically necessary treatment, but his appeals have been denied. While any  
6 further administrative appeals would be futile, no such appeal is required before a claim  
7 may be brought under §1557.

8 83-88. Because of BCBSIL's administration and enforcement of the Exclusion,  
9 Plaintiffs have suffered emotional distress, humiliation, degradation, embarrassment,  
10 emotional pain and anguish, violation of their dignity, loss of enjoyment of life, and other  
11 compensatory damages, in an amount to be established at trial.

#### 12 V. CLASS ALLEGATIONS

13 89. Plaintiffs, on behalf of themselves and all similarly situated individuals,  
14 bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil  
15 Procedure.

16 90. *Class Definitions.* Plaintiffs assert their claims against BCBSIL on behalf  
17 of the following class.

18 91. The proposed Class is defined as: All individuals who have been, are, or  
19 will be participants or beneficiaries in an ERISA self-funded "group health plan" (as  
20 defined in 29 U.S.C. §1167(1)) administered by BCBSIL that contains a categorical  
21 exclusion denying or limiting coverage for gender affirming health care, like the  
22 "Transgender Reassignment Surgery" Exclusion contained in the CHI Plan, at any time  
23 on or after November 23, 2014; and who were, are, or will be denied pre-authorization  
24 or coverage of otherwise covered services due to BCBSIL's administration of such an  
25 exclusion.

1           92. *Size of Class.* The proposed class is expected to be so numerous and  
2 geographically dispersed that joinder of all members is impracticable.

3           93. *Class Representative C.P.* Named Plaintiff C.P. is a member of the  
4 proposed class. C.P. is a beneficiary in a self-funded group health plan administered by  
5 BCBSIL that contains a categorical exclusion denying coverage for gender affirming  
6 health care, namely, the “Transgender Reassignment Surgery” Exclusion. C.P. has been  
7 prescribed otherwise covered services under the group health plan which have been  
8 denied by BCBSIL under the “Transgender Reassignment Surgery” Exclusion. C.P.’s  
9 claims are typical of the claims of other members of the proposed class and through his  
10 mother, he will fairly and adequately represent the interests of the class.

11           94. *Common Questions of Law and Fact.* This action requires a determination  
12 of whether BCBSIL’s administration of the Transgender Reassignment Surgery  
13 Exclusion and other similar exclusions denying coverage for gender affirming health  
14 care in the ERISA self-funded plans that it administers, violates Section 1557 of the  
15 Affordable Care Act. Adjudication of this issue will in turn determine whether BCBSIL  
16 must reprocess all such denied claims and be enjoined from administering such  
17 exclusions now and in the future.

18           95. *Separate suits would create risk of varying conduct requirements.* The  
19 prosecution of separate actions by proposed class members against BCBSIL would create  
20 a risk of inconsistent or varying adjudications with respect to individual class members  
21 that would establish incompatible standards of conduct. Certification is therefore proper  
22 under Federal Rule of Civil Procedure 23(b)(1).

23           96. *BCBSIL has acted on grounds generally applicable to the relevant class.*  
24 By administering and applying policies and exclusions that result in the denial of  
25 coverage of gender affirming care, BCBSIL has acted on grounds generally applicable to  
26

1 the relevant class, rendering declaratory relief appropriate respecting the entirety of the  
2 class for the particular claim. Certification is therefore proper under Federal Rule of  
3 Civil Procedure 23(b)(2).

4 97. Venue. This action can be most efficiently prosecuted as a class action in  
5 the Western District of Washington, where Defendants do business and where C.P.  
6 resides. The case is properly assigned to the Western District of Washington in Tacoma,  
7 because the claim arose in Kitsap County Washington, where Plaintiff resides.

8 98. Class Counsel. C.P. and Ms. Pritchard have retained experienced and  
9 competent class counsel. Plaintiffs are represented by Sirianni Youtz Spoonemore  
10 Hamburger PLLC, a Seattle-based law firm with significant experience representing  
11 individuals who have been denied pension, health or disability benefits under plans  
12 governed by both state law and ERISA, as well as in class actions. Plaintiffs are also  
13 represented by Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal"), the  
14 nation's oldest and largest legal organization dedicated to protecting the rights of  
15 lesbian, gay, bisexual, and transgender ("LGBT") people and everyone living with HIV.  
16 Lambda Legal has extensive federal court experience litigating on behalf of LGBT  
17 people, including regarding transgender people's access to nondiscriminatory health  
18 care, and has served as class counsel and putative class counsel in a number of LGBT-  
19 related cases.

20 **VI. CLAIM FOR RELIEF:**

21 **V. VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT**  
22 **§ 1557, 42 U.S.C. § 18116**

23 84.99. Plaintiffs re-allege and incorporate each of the allegations in the  
24 paragraphs above, as though fully set forth herein.

1 100. Plaintiffs state this cause of action on behalf of themselves and members of  
2 the proposed class for purposes of seeking declaratory and injunctive relief, and  
3 challenge the discriminatory sex-based discrimination arising out of the administration  
4 of the exclusions denying coverage for gender affirming care, such as the Exclusion, both  
5 facially and as applied to Plaintiffs and the proposed class. Named Plaintiffs also state  
6 this cause of action for their individual compensatory damages, including but not  
7 limited to out-of-pocket damages, and consequential damages.

8 85-101. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that “an  
9 individual shall not, on the ground prohibited under ... title IX of the Education  
10 Amendments of 1972 ... be excluded from participation in, denied the benefits of, or be  
11 subjected to discrimination under, any health program or activity, any part of which is  
12 receiving Federal financial assistance....” ~~(emphasis added).~~

13 86-102. Defendant BCBSIL is a covered “health program or activity” a part  
14 of which receives federal financial assistance and is therefore a “covered entity” for  
15 purposes of Section 1557.

16 87-103. Discrimination on the basis of sex characteristics, gender identity,  
17 nonconformity with sex stereotypes, transgender status, or gender transition is  
18 discrimination on the basis of “sex” under Section 1557.

19 104. A covered entity, such as BCBSIL, cannot provide or administer health  
20 insurance or health benefit coverage which contains a categorical exclusion from  
21 coverage for gender-affirming health care, or otherwise impose limitations or restrictions  
22 on coverage for specific health services related to gender transition if such limitation or  
23 restriction results in discrimination against a transgender individual.

24 105. Because BCBSIL is a covered entity under Section 1557 of the ACA,  
25 Plaintiffs and members of the proposed class have a right under Section 1557 to receive  
26

1 health benefits administered by BCBSIL free from discrimination on the basis of sex, sex  
2 characteristics, gender identity, nonconformity with sex stereotypes, transgender status,  
3 or gender transition.

4 106. The categorical exclusions of gender affirming care administered by  
5 BCBSIL, on their face and as applied to Plaintiffs and members of the proposed class,  
6 violate Section 1557's prohibition against discrimination on the basis of sex in a health  
7 program or activity receiving federal financial assistance.

8 107. BCBSIL has administered and continues to administer exclusions of gender  
9 affirming care, despite the warning from the U.S. Department of Health and Human  
10 Services that "[a]n explicit, categorical (or automatic) exclusion or limitation of coverage  
11 for all health services related to gender transition is unlawful on its face." See 81 Fed.  
12 Reg. 31,429. It has done so despite the nondiscrimination assurances it gave to the federal  
13 government and its enrollees. It has done so despite its own conclusion that to engage in  
14 such discrimination in its insured plans is illegal.

15 88-108. By administering the ~~Plan's~~ Exclusion as an exclusion of all  
16 medically necessary care "for, or leading to, gender reassignment surgery," BCBSIL has  
17 drawn a classification that discriminates on the basis of "sex." Specifically, BCBSIL has  
18 denied C.P. and other similarly situated individuals coverage for medically necessary  
19 services based on ~~his~~their sex, sex characteristics, gender identity, nonconformity with  
20 sex stereotypes, transgender status, or gender transition. Other enrollees whose gender  
21 identity conforms with their sex assigned at birth are able to receive these services, when  
22 medically necessary.

23 ~~89.1. A covered entity, such as BCBSIL, cannot provide or administer health~~  
24 ~~insurance or health benefit coverage which contains a categorical exclusion from~~  
25 ~~coverage for gender affirming health care, or otherwise impose limitations or restrictions~~

~~on coverage for specific health services related to gender transition if such limitation or restriction results in discrimination against a transgender individual.~~

~~90.— Because BCBSIL is a covered entity under Section 1557 of the ACA, Plaintiffs have a right under Section 1557 to receive health benefits administered by BCBSIL free from discrimination on the basis of sex, sex characteristics, gender identity, nonconformity with sex stereotypes, transgender status, or gender transition.~~

~~91.— BCBSIL continues to administer the Exclusion, despite the warning from the U.S. Department of Health and Human Services that “[a]n explicit, categorical (or automatic) exclusion or limitation of coverage for all health services related to gender transition is unlawful on its face.” See 81 Fed. Reg. 31,429. It has done so despite the non-discrimination assurances it gave to the federal government and its enrollees. It has done so despite its own conclusion that to engage in such discrimination in its insured plans is illegal.~~

92.109. By excluding coverage of all health care related to gender dysphoria or any other care BCBSIL determines is “for, or leading to, gender reassignment surgery,” BCBSIL has intentionally discriminated, and continues to discriminate on the basis of sex, against Plaintiffs C.P. and Patricia Pritchard and similarly situated individuals in violation of Section 1557.

110. BCBSIL has discriminated against Plaintiffs and the members of the proposed class on the basis of sex in violation of Section 1557 and have thereby denied Plaintiffs and the members of the proposed class the full and equal participation in, benefits of, and right to be free from discrimination in a health program or activity.

111. Plaintiffs and the members of the proposed class have been and continue to be injured by BCBSIL’s administration, application, and enforcement of exclusions to deny coverage for gender affirming care, such as the “Transgender Reassignment

1 Surgery” Exclusion, and are entitled to reprocessing of all claims wrongfully denied and  
2 all medical expenses never submitted for consideration by the Plan as a result of any  
3 such exclusions.

4 93.112. As a result of ~~the Exclusion~~, BCBSIL’s administration of exclusions  
5 of coverage for gender affirming care, Plaintiffs have suffered harm, including but not  
6 limited to emotional distress, stigmatization, humiliation, a loss of dignity, and financial  
7 harm. By knowingly and intentionally offering and administering health care coverage  
8 to Plaintiffs that discriminates on the basis of sex, BCBSIL has intentionally violated the  
9 ACA, for which the named Plaintiffs are entitled to compensatory damages, including  
10 but not limited to out-of-pocket damages, and consequential damages.

11 94.113. Without reprocessing, declaratory and injunctive relief from ~~the~~  
12 Plan’s BCBSIL’s ongoing, discriminatory ~~Exclusion~~ administration of the exclusions of  
13 coverage for gender-affirming care, Plaintiffs and proposed class members have suffered  
14 and will continue to suffer irreparable harm ~~in the future.~~

15 **VI.VII. DEMAND FOR RELIEF**

16 WHEREFORE, Plaintiffs request that this Court:

17 1. Enter judgment on behalf of Plaintiffs and the members of the proposed  
18 classes due to BCBSIL’s discrimination on the basis of sex in violation of the Affordable  
19 Care Act’s Section 1557;

20 2. Declare that BCBSIL violated ~~Plaintiffs’ rights~~ the rights of Plaintiffs and  
21 the members of the proposed classes under Section 1557 of the ACA when it  
22 administered and enforced the Plan’s Exclusion and similar exclusions of all treatment  
23 “for, or leading to, gender reassignment surgery,” and/or other Plan provisions, policies  
24 or practices that wholly exclude or impermissibly limit coverage of gender-affirming  
25 health care;

3. Enjoin BCBSIL, its agents, employees, successors, and all others acting in concert with them, from administering or enforcing health benefit plans that exclude coverage for gender-affirming health care, including applying or enforcing the Plan's Exclusion of services "for, or leading to, gender reassignment surgery," and other similar exclusions in the health benefit plans BCBSIL administers and enforces, in violation of the Affordable Care Act during the class period, now and in the future;

4. Require BCBSIL, its agents, employees, successors, and all others acting in concert with them, to reprocess and when, medically necessary and meeting the other terms and conditions under the relevant plans, provide coverage (payment) for all denied pre-authorizations and denied claims for coverage during the Class Period that were based solely upon exclusions for gender-affirming care, including but not limited to, the Plan's Exclusion of services "for or leading to gender reassignment surgery;"

4.5. Enter judgment in favor of the named Plaintiffs for damages in an amount to be proven at trial that would fully compensate Plaintiffs for their financial harm, emotional distress and suffering, embarrassment, humiliation, pain and anguish, violations of their dignity, and other damages due to BCBSIL's conduct in violation of Section 1557 of the Affordable Care Act;

5.6. Award Plaintiffs their attorney reasonable attorneys' fees and costs, and expenses under 42 U.S.C. §1988 and all other applicable statutes; and

6.7. Award such other and further relief as is just and proper.

DATED: September 10, 2021.

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~~forthcoming.~~

*Attorneys for Plaintiffs*

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; and  
PATRICIA PRITCHARD,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,  
Defendant.

NO. 3:20-cv-06145-RJB

[PROPOSED]  
ORDER GRANTING PLAINTIFFS'  
MOTION TO AMEND COMPLAINT

Noted for Consideration:  
October 1, 2021

THIS MATTER comes before the Court on Plaintiffs' Motion for Leave to File the Amended Complaint, pursuant to FRCP 15(a)(2) and LCR 15. The Court has reviewed all the pleadings and filings in the record, including Plaintiffs' Motion, Defendant's Opposition, if any, and Plaintiffs' Reply, if any, and the proposed Amended Complaint in *Appendix A* to Plaintiffs' Motion.

Therefore, pursuant to Fed. R. Civ. P. 15(a)(2) and LCR 15, Plaintiffs' Motion for Leave to File Plaintiffs' Amended Complaint is GRANTED. Plaintiffs may file the Amended Complaint.

DATED: September \_\_\_\_, 2021.

\_\_\_\_\_  
Robert J. Bryan  
United States District Judge

1 Presented by:

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