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 TO COMPEL DISCOVERY **Note on Motion Calendar: June 3, 2022**

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I. INTRODUCTION/RELIEF REQUESTED

This Motion seeks Defendant's complete responses to Plaintiffs' Interrogatories ("ROGs") Nos. 3, 6, and 8, and Requests for Production of Documents ("RFPs") Nos. 12–14. Specifically, BCBSIL has declared that it will not produce copies of summary plan descriptions ("SPDs") of other plans that contain similar exclusions of gender-affirming care to that contained in the CHI plan, and the Benefit Program Applications ("BPAs") for those plans, without a court order. Plaintiffs also seek *in camera* review by the Court or an appointed special master of the documents withheld by BCBSIL as attorney-client privileged. *See* Hamburger Decl., *Exh. 16.*

II. FACTS

A. Status of Case.

This lawsuit was filed on November 23, 2020. Dkt. No. 1. On February 23, 2021, the Court issued a Minute Order Setting Trial and Pretrial Dates. Dkt. No. 15. On February 25, 2021, Defendant filed a motion to dismiss. Dkt. No. 17. The Court denied Defendant's motion in full on May 4, 2021. Dkt. No. 23. With Court approval, on November 2, 2021, Plaintiffs amended their Complaint as a class action seeking injunctive relief. Dkt. No. 38.

Plaintiffs served their first discovery requests on June 18, 2021. Hamburger Decl., *Exh. 1*. Defense counsel requested and received multiple extensions for the production of discovery. *Id.* Defendant did not provide a response to the first discovery requests until December 10, 2021. *Id., Exh. 2.* No documents were provided with Defendant's first responses. *Id.,* ¶2.

Plaintiffs served their second discovery requests on November 9, 2021. *Id., Exh. 3.* Defense counsel responded on December 10, 2021, but did not produce any responsive documents at that time. *Id.,* ¶3, *Exh. 4.* Defendant supplemented its responses to the second discovery request on May 4, 9 and 12, 2022. *See id., Exhs. 5–7.* Defendant's repeated supplementation occurred mere days and hours before the first Rule 30(b)(6) deposition was held on May 13, 2022. *Id.,* ¶3.

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Plaintiffs served two additional discovery requests, to which Defendant provided responses. *Id.,* ¶4. This Motion does not address Defendant's responses to Plaintiffs' Third and Fourth Discovery Requests. *Id.* Defendant served its privilege log on May 10, 2022. *Id.,* ¶5.

The first witness for Defendant's Rule 30(b)(6) deposition was deposed on May 13, 2022. *Id.,* ¶3. The remaining Rule 30(b)(6) witnesses will be deposed on June 2 and 28, 2022. *Id.* Plaintiffs' counsel alerted defense counsel both before and during the deposition that they reserve the right to recall the witness after this dispute is resolved by the Court. *Id.,* ¶6.

B. Defendant's Responses to Interrogatories Nos. 3, 6, 8 and Requests for Production Nos. 12–14 Are Incomplete.

The disputed ROGs seek the identity of the specific plans for which BCBSIL administers any gender-affirming care exclusion or a similar exclusion to that of the plan in which C.P. is enrolled. *See Exh. 1,* ROG 3, *Exh. 3,* ROG 6. RFP Nos. 12–14 seek copies of the BPAs and the plan contracts, such as the SPDs, for the plans identified in ROGs 3 and 6. *Exh. 3,* RFP Nos. 12–14. This information is needed by Plaintiffs, among other things, to properly define the proposed class, and to demonstrate commonality and typicality, all of which Defendant disputes. *See* Dkt. No. 38, ¶¶89–98; Dkt. No. 41, ¶¶89–98. In addition, Plaintiffs seek the identities of the 200 plans found by BCBSIL to contain a gender-affirming care exclusion so they may determine whether and to what extent the plans are sponsored by what type of organizations, including religious organizations, such as by examining its Form 5500s filed with the U.S. Department of Labor.

To date, BCBSIL has not provided the identities of these plans, the SPDs or BPAs, or even a sampling of the representative SPDs and BPAs. Instead, BCBSIL belatedly disclosed the approximate ***number*** of plans with a gender-affirming care exclusion, without revealing their identities or the actual language of each exclusion. *See Exh. 2,* Response to ROG 3; *Exh. 4,* Response to ROG 6; *Exh. 6,* Supp. Response to ROG 6. Only after significant protest from Plaintiffs' counsel, did BCBSIL disclose on May 11, 2022 what appears to be selected quotations from less than a dozen of these 200 unidentified plans. *Exh. 7,* Second Supp. Response to ROG 6,

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Addendum A. After months of representing that the information would be forthcoming, and on the eve of the Rule 30(b)(6) deposition, BCBSIL declared it would not produce the specific identities nor the actual plans or BPAs (or even representative copies) without a court order. *Id., Exh. 8,* p. 1.

Before May 10, 2022, defense counsel never informed Plaintiffs' counsel that BCBSIL would not identify or disclose the actual SPDs and BPAs. *See id.,* ¶7. For example, on January 27, 2022, Plaintiffs' counsel inquired again about the missing information including documentation regarding other similarly situated plans. *See id., Exh. 9.* Similarly, another letter was sent to Defendant seeking the responsive documents on March 9, 2022. *Id., Exh. 10.* Defense counsel did not respond that it would not produce the requested documents. *Id.,* ¶7. Another discovery conference was held, during which defense counsel agreed to produce the outstanding discovery. *Id., Exh. 11.* Plaintiffs confirmed the following:

> Defendants need more time to respond to ROGs 6–8 related to the other plans with similar exclusions. ***We understand that defendants do not dispute that this information is required to be disclosed*** but that the logistics of delivering it to us has been challenging and time consuming….

Id. (emphasis added). Another discovery conference was held on April 22, 2022. *Id., Exh. 12.* As a follow up to the conference, Plaintiffs' counsel wrote: "We discussed that we really need the outstanding discovery, supplemental responses and numerosity information by the end of next week, in order to adequately prepare for the May 13 deposition." *Id.*

On May 3, 2022, Plaintiffs' counsel inquired whether the production was complete, because no documents regarding similar plans had been produced in response to Interrogatories Nos. 3, 6 and RFP No. 12. *Id.,* ¶6, *Exh. 13.* Again, on May 10, 2022, Plaintiffs' counsel wrote defense counsel specifically to request the discovery responsive to Interrogatories Nos. 3, 6 and RFP Nos. 12–14:

> We appreciate the supplemental disclosure provided yesterday but there were no additional documents produced. We understand that you have identified at least

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> 200 plans that have a similar exclusion to that in the CHI plan, but none of the contracts or BPAs were produced, as requested in RFP No. 12.
>
> We need at least some of these contracts and BPAs for the deposition on Friday. We need to understand how BCBSIL identified the 200 plans, and whether and how the language in these identified plans differs, since BCBSIL asserts that the language in the proposed class definition is "vague, ambiguous and not easily ascertainable" and defendant denied our allegations of commonality and typicality in its Answer.

Id., Exh. 8, p. 6. Plaintiffs' counsel noted that the information was needed to address commonality and typicality as well as to understand whether and how the plans were connected to religious organizations. *Id.,* pp. 5–6. Plaintiffs' counsel also noted that Defendant had not properly responded to Interrogatory No. 8—instead of providing the total number of people enrolled in each identified plan (as requested, which would allow Plaintiffs to confirm the approximate size of the proposed class), Defendant only produced the number of denied claims. *Id., Exh. 8,* p. 4.

With the Rule 30(b)(6) deposition only days away, Plaintiffs' counsel sought an immediate discovery conference. *Id.,* p. 6. After hours, defense counsel responded, questioning why Plaintiffs needed the discovery sought. *Id., Exh. 14*, p. 1. Plaintiffs' counsel wrote in response that the information was required to establish a "common standard practice" running through all of the exclusions. *Id.*

The following morning, defense counsel represented, in an unsworn statement in an email, certain facts about the undisclosed 200 similar plans about which they expected BCBSIL's witnesses would testify. *See id., Exh. 8,* p. 5. In an effort to compromise, Plaintiffs' counsel requested that redacted versions of the disclosure be produced before the Rule 30(b)(6) deposition so that it would not need to be cancelled (defense counsel had already travelled to Chicago Illinois where the witnesses were located). *Id.,* p. 4. This request was not a waiver of Plaintiffs' right to review the precise evidence sought in discovery and upon which the Rule 30(b)(6) witnesses' testimony was based.

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In response, defense counsel provided an unattributed chart, with unidentified "Exclusion/Limitation" language. *See id., Exh. 8,* pp. 1–3. Plaintiffs' counsel objected that they required the actual documents "not some defense counsel notes in an email." *Id.*, p. 1. In response, defense counsel stated:

> ***We will not be producing the actual SPDs or the identity of the employer absent the Court ordering us to do that***. You have not articulated any reason why you need the actual SPDs or the identity of the employer.

Id., p. 1 (emphasis added). Defendant ultimately produced the chart as an appendix to its discovery responses, but without any explanation as to what it represents. *See id., Exh. 7,* Appendix A.

Before the May 11 discovery conference, Plaintiffs' counsel clarified the precise issues in dispute. *See id., Exh. 15,* pp. 2–3. After the conference, Plaintiffs' counsel sent a confirming email to follow up. *Id.,* p. 1. The parties agreed that no resolution of the dispute was possible, and that a motion to compel was required to address Defendant's responses to Interrogatories Nos. 3, 6, and 8 and RFP Nos. 12–14. *Id.*

III. ARGUMENT

A. Legal Standard.

Parties may obtain discovery about any matter, so long as it is not privileged and it is relevant to the claim or defense of any party. Fed. R. Civ. P. 26(b)(1). Relevant information need not be admissible. It must only appear to be "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Under the liberal discovery principles of the Federal Rules, the party opposing discovery has a heavy burden to show why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

B. Defendant's Objection to Responding to ROGs Nos. 3, 6, and 8 and Producing Documents in Response to RFP Nos. 12–14 Was Untimely.

Defendant did not inform Plaintiffs that it would not identify or produce copies of the 200 SPDs that utilize similar exclusions to that of the CHI plan, nor the relevant BPAs until May 10, 2022, just three days before the Rule 30(b)(6) deposition, and months after Defendant's initial

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responses to the discovery requests were provided. *Compare* Hamburger Decl., *Exhs. 2, 4* with *Exh. 8,* p. 1. Having failed to timely inform Plaintiffs of this position when it originally responded on December 10, 2021, Defendant waived its right to do so on May 10, 2022.

Any grounds for objecting to an interrogatory must be stated with specificity. Fed. R. Civ. P. 33(b)(4). If a party does not object in a timely manner to discovery requests, that failure generally constitutes a waiver of any such objections. *See* Fed. R. Civ. P. 33(b)(4); *Richmark Corp. v. Timber Falling Consultants,* 959 F.2d 1468, 1473 (9th Cir. 1991); *Arch Ins. Co. v. Safeco Ins. Co. of Am.,* 2019 U.S. Dist. LEXIS 210198, at *4 (W.D. Wash. Dec. 5, 2019). Defendant has offered no specific grounds for refusing to disclose this information, either with its original responses or at any time before May 10, 2022.

Even now, Defendant offers no "good cause" reason for its failure to timely and specifically object. *See Blumenthal v. Drudge*, 186 F.R.D. 236, 240 (D.D.C.1999). Courts typically consider several relevant factors in this situation, including: "(1) the length of the delay in responding; (2) the reason for the delay; (3) dilatory conduct or bad faith by the responding party; (4) prejudice to the party seeking the disclosure; (5) the nature of the request (*i.e.*, whether the discovery requested was overly burdensome or otherwise improper); and (6) the harshness of imposing the waiver." *Valdez v. Genesis Healthcare LLC,* 2021 U.S. Dist. LEXIS 243297, at *19 n.25 (C.D. Cal. Sep. 7, 2021). All factors here favor Plaintiffs. Defendant waited five months after its responses were due, and just days before the Rule 30(b)(6) deposition to sandbag Plaintiffs with the news that it would not produce the discovery requested without a court order. By any measure, Defendant's actions were prejudicial and dilatory.

C. The Discovery Sought Was Proper Because it is Likely to Substantiate Plaintiffs' Class Allegations, as well as Provide Further Evidence of Defendant's Discriminatory Conduct.

Should the Court conclude that BCBSIL has not waived its objection to discovery responsive to ROGs 6, 8 and RFPs 12–14, such that it considers Defendant's reasons for refusing

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to disclose the requested discovery, it should reject them. BCBSIL appears to take the position that it is burdensome and unnecessary to produce the copies of the 200 plans it has *already* identified, as well as the related BPAs. When Plaintiffs suggested that Defendant produce a representative sampling of the SPDs and BPAs, defense counsel also refused. Defendant further refused to provide the identities of the plans it had uncovered that contain a gender-affirming care exclusion. Defendant argued that the discovery was not needed by Plaintiffs, but did not identify any basis under the Federal Rules of Civil Procedure for refusing to produce the information.

Discovery in support of class certification is appropriate where it is necessary to properly define the proposed class and possibly subclasses. *Kamm v. California City Development Co.,* 509 F.2d 205, 210 (9th Cir. 1975). Where, as here, the material evidence to establish class certification is within the sole possession of Defendant, class discovery is appropriate. *Doninger v. Pacific Northwest Bell, Inc.,* 564 F.2d 1304, 1313 (9th Cir. 1977). While the plaintiff bears the burden of showing that discovery is likely to produce persuasive information substantiating the class allegations, this standard is not difficult to meet. *See id*. In this situation, "[r]elevancy is broadly construed" such that a court should permit discovery "if there is 'any possibility' that the information sought may be relevant to the claim or defense of any party." *Cedano v. Thrifty Payless, Inc.,* 2011 U.S. Dist. LEXIS 155956, at *23 (D. Or. May 9, 2011).

The discovery sought in Interrogatories Nos. 3, 6, and 8 and RFPs Nos. 12–14 is all necessary for and highly relevant to class certification, as well as relevant and even admissible evidence of BCBSIL's practices with regarding to its implementation and enforcement of gender-affirming care exclusions. Plaintiffs need to understand precisely how BCBSIL engages in a standard practice when it administers the plans identified for Interrogatory No. 6. They need to review the variations of the language within the actual plans, as well as the various indemnity clauses contained in the BPAs to understand BCBSIL's standard practice. *See e.g.,* Hamburger Decl., ¶8. Plaintiffs are entitled to review the documents upon which the Rule 30(b)(6) testimony is based, and test the representations made by the deponent. Without the underlying documents

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and information, Plaintiffs' counsel had no ability to dispute the representations made by BCBSIL's witness during the first 30(b)(6) deposition. And while Plaintiffs remain willing to work with defense counsel to identify a representative sample of the SPDs and BPAs for disclosure, if disclosure of all 200 plans is too burdensome, it is doubtful producing such discovery is too burdensome when it is clear Defendant is aware of the identity of each of the 200 plans. *See* Part D, *infra*.

This information is required by Plaintiffs. Subclasses may be needed for the proposed class based upon the reasons that the various identified employers give for directing BCBSIL to administer gender-affirming exclusions. For example, in the CHI plan's BPAs, CHI claimed it could impose the Exclusion in the name of "religious freedom." *Id.*, ¶8. Plaintiffs disagree with CHI's claim, however, it is possible there may be other reasons or justifications offered in the BPAs of the 200 identified that may necessitate the establishment of subclasses.

Plaintiffs need to understand the range of "standard practices" utilized by BCBSIL when administering a gender-affirming care exclusion. Although Plaintiffs received some testimony from BCBSIL's first Rule 30(b)(6) witness regarding BCBSIL's standard practices, they are entitled to the underlying documents demonstrating such standard practices as well, and to question BCBSIL's witnesses about them.

D. The Discovery Sought is Not Burdensome.

BCBSIL identified 200 specific plans that contain a gender-affirming care exclusion. Hamburger Decl., *Exh. 6,* Response to ROG 6. The plans are known to Defendant and have been reviewed by defense counsel. Their production cannot be unduly burdensome at this time since they are now identified. Nonetheless, Plaintiffs' counsel offered that a sampling of the SPDs and BPAs could be produced, rather than all 200. Defense counsel also rejected this approach as "unnecessary" despite Plaintiffs' obligation to demonstrate commonality and typicality for class certification. At one point, defense counsel objected to production of the plans because it would

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require obtaining the permission from the various employers to make such a disclosure. Hamburger Decl., ¶9. Defense counsel did not identify any reason why such permission was required, nor why defense counsel did not obtain it, during the many months Plaintiffs were waiting for these documents. *Id.*

E. Defendant Must Produce an Adequate Privilege Log.

Defendant produced a privilege log that reflects documents withheld pursuant to a joint defense agreement, long before this lawsuit was filed. *See id., Exh. 16.* The party asserting attorney-client privilege bears the burden of establishing both the attorney-client relationship and the privileged nature of the communication. *United States v. Graf*, 610 F.3d 1148, 1156 (9th Cir. 2010). "Because it impedes full and free discovery, the attorney-client privilege is strictly construed." *United States v. Ruehle,* 583 F.3d 600, 607 (9th Cir. 2009). To effectively assert the privilege, the party must make a *prima facie* showing that the attorney-client privilege applies to the disputed documents, typically pursuant to a privilege log. *In re Grand Jury Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992). A *prima facie* showing is demonstrated when a privilege log, on its own or together with the unredacted portions of the disputed documents, identifies: "(a) the attorney and client involved, (b) the nature of the document, (c) all persons or entities shown on the document to have received or sent the document, (d) all persons or entities known to have been furnished the document or informed of its substance, and (e) the date the document was generated, prepared, or dated." *Id.*

Since the purpose of a privilege log is to provide both the opposing party and the Court with enough information to evaluate the claim of privilege, "[f]ailure to provide sufficient identification waives the privilege*." Baxter Healthcare Corp. v. Fresenius Med. Care Holding, Inc.,* 2008 U.S. Dist. LEXIS 125550, at *10 (N.D. Cal., Dec. 12, 2008). Here, the privilege log produced by Defendant does not identify the attorney(s) involved in the communication, the nature of the document, and all of the parties or entities known to have been furnished the

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document. Additionally, Defendant has not produced the joint defense agreement that they claim is the basis for the attorney-client privilege.

F. The Documents May Be Subject to ERISA's Fiduciary Exception to Attorney-Client Privilege.

The disputed documents in the privilege log, even if attorney-client privileged, may be subject to the fiduciary exception under ERISA, since they appear to be between a Plan Sponsor and Plan Administrator concerning plan administration. The Ninth Circuit has held that, in the ERISA context, a "fiduciary is disabled from asserting the attorney-client privilege against plan beneficiaries on matters of plan administration." *U.S. v. Mett*, 178 F.3d 1058, 1063 (9th Cir. 1999). The exception applies to all plan fiduciaries. *Stephan v. Unum Life Ins. Co.*, 697 F.3d 917, 931–32 (9th Cir. 2012). The exception exists because the plan fiduciary is only a representative for the beneficiaries of the Plan: "[I]t is not the fiduciary but rather the plan beneficiary that is the real client. Thus, attorney-client privilege is maintained; there is only a different understanding of the identity of the client." *Sender v. Franklin Res., Inc.*, 2016 U.S. Dist. LEXIS 42739, at *2–3 (N.D. Cal. Mar. 30, 2016) (internal citations and quotations omitted).

The exception "has its limits—by agreeing to serve as a fiduciary, an ERISA trustee is not completely debilitated from enjoying a confidential attorney-client relationship." *Mett*, 178 F.3d at 1063. In analyzing whether a document falls within the fiduciary exception, the Ninth Circuit explained:

> [T]he case authorities mark out two ends of a spectrum. On the one hand, where an ERISA trustee seeks an attorney's advice on a matter of plan administration and where the advice clearly does not implicate the trustee in any personal capacity, the trustee cannot invoke the attorney-client privilege against the plan beneficiaries. On the other hand, where a plan fiduciary retains counsel in order to defend herself against the plan beneficiaries (or the government acting in their stead), the attorney-client privilege remains intact.

Id. at 1064. In *Mett*, the memoranda at issue fell within the latter category because they were not rendering advice "on a matter of plan administration," but "were plainly defensive on the trustees'

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part and aimed at advising the trustees how far they were in peril." In *Stephan*, on the other hand, the "documents sought f[e]ll on the other end of the *Mett* spectrum" because "the disputed documents offer[ed] advice solely on how the Plan ought to be interpreted." *Stephan*, 697 F.3d at 932. The documents in *Stephan* comprised "notes of conversations between Unum claims analysts and Unum's in-house counsel about how the insurance policy under which Stephan was covered ought to be interpreted." *Id*. The Ninth Circuit held that such documents concerned plan administration and did not "address any potential civil or criminal liability Unum might face, nor is there any indication that they were prepared with such liability in mind." *Id*. Further, the documents "were prepared to advise Unum claims analysts about how best to interpret the Plan, and were communicated to the analysts before any final determination on Stephan's claim had been made." *Id*. at 933. Timeliness is also a critical factor: the Ninth Circuit held "that it is not until after the final determination—that is, after the final administrative appeal—that the interests of the Plan fiduciary and the beneficiary diverge for purposes of the fiduciary exception." *Stephan*, 697 F.3d at 933. Before the final denial, the interests of a Plan fiduciary and its beneficiary are ***not*** sufficiently adverse to override the fiduciary exception. *Id.*

G. *In Camera* Review is Required.

In camera review is the simplest method to resolve the dispute over Defendant's privilege log. "The Ninth Circuit … requires that each communication be examined individually because 'the nature of the particular attorney-client communication' is dispositive." *Klein v. Nw. Mut. Life Ins. Co.*, 806 F. Supp. 2d 1120, 1133 (S.D. Cal. 2011) *citing to Mett,* 178 F.3d at 1065. "[W]hile this communication-by-communication analysis is perhaps untidy, it is crucial if the attorney-client privilege and the fiduciary exception are to coexist." *Wit v. United Behavioral Health*, 2016 U.S. Dist. LEXIS 7242, at *16 (N.D. Cal., Jan. 21, 2016), *also citing to Mett,* 178 F.3d at 1064.

In camera review is necessary to determine whether each redacted document relates to plan administration rather than plan liability, although none involve communications from

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Defendant's legal counsel to Defendant. *See Exh. 16.* Most of the documents appear to relate to C.P.'s appeals or communications to or from CHI and BCBSIL on how to administer the benefit.

The parties have met and conferred to discuss the privilege log, but defense counsel did not change the designation of any of the disputed documents. Hamburger Decl., ¶10. The parties' counsel discussed that *in camera* review might resolve the dispute.[1]

IV. CONCLUSION

The Court should order Defendant to fully and completely respond to Interrogatories Nos. 3, 6, and 8, and produce the documents responsive to RFP Nos. 12–14. The Court should also order Defendant to produce the documents referenced in its privilege log, under seal and in unredacted format, for *in camera* review either by the Court or an appointed special master. Following *in camera* review, the Court and/or the special master should order Defendant to produce, in unredacted format, all of the disputed documents that relate to Defendant's administration of the Exclusion, including how the Exclusion is or ought to be interpreted or applied, and that do not address Plan Sponsor civil or criminal liability.

DATED: May 19, 2022.

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[1] Plaintiffs are willing to split with Defendant the cost of retaining a special master for discovery purposes, such as Ret. Judge George Finkle of Judicial Dispute Resolution in Seattle, Washington. *See* http://www.jdrllc.com/ (last visited 5/17/22).

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The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
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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 COMPEL DISCOVERY **Note on Motion Calendar:** **June 3, 2022**

THIS MATTER having come before the below-signed Judge of the above-entitled Court upon the Plaintiffs' Motion to Compel Discovery, and the Court having considered the Motion and the pleadings in this matter, and it appearing to be in the best interest of the case, therefore,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Compel Discovery is GRANTED.

Defendant shall fully and completely respond to Interrogatories Nos. 3, 6, and 8, and produce the documents responsive to RFP Nos. 12–14. Defendant shall also produce the documents referenced in its privilege log, under seal and in unredacted format, for *in camera* review by ☐ the Court or ☐ a special master mutually agreed upon and paid for by the parties. Following *in camera* review, the Court and/or the special master shall order Defendant to produce, in unredacted format, amy of the disputed documents that relate to Defendant's administration of

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the Exclusion, including how the Exclusion is or ought to be interpreted or applied, and that do not address Plan Sponsor civil or criminal liability, on or before _____**, 2022**.

DATED this _____ day of June, 2022.

Robert J. Bryan
United States District Judge

Presented by:

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