

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,

Plaintiffs,

vs.

BLUE CROSS BLUE SHIELD OF  
ILLINOIS,

Defendant.

Case No. 3:20-cv-06145-RJB

**DEFENDANTS' MOTION TO SEAL  
MOTION TO COMPEL BRIEFING**

1 Pursuant to Federal Rules of Civil Procedure and LCR 5(g)(3), Defendant Blue Cross  
2 Blue Shield of Illinois (“BCBSIL”) respectfully submits this motion for leave to re-designate the  
3 following documents in the above-captioned matter as filed under seal:

- 4 • Plaintiffs’ Motion to Compel Discovery [Dkt. 52]; and
- 5 • Declaration of Eleanor Hamburger in Support of Plaintiff’s Motion to  
6 Compel [Dkt. 53].

7 BCBSIL also seeks leave to file the following related documents under seal:

- 8 • BCBSIL’s Response to Plaintiffs’ Motion to Compel, filed concurrently  
9 herewith; and
- 10 • Declaration of Gwendolyn C. Payton in Support of BCBSIL’s Response to  
11 Plaintiffs’ Motion to Compel, filed concurrently herewith.

12 These four documents are jointly referred to herein as the “Motion to Compel Briefing.”

13 Counsel for BCBSIL conferred with counsel for Plaintiffs via email on June 3, 2022 to  
14 attempt to reach an agreement on the need to file these documents under seal, to minimize the  
15 amount of material under seal, and to explore redaction or other alternatives. Plaintiffs do not  
16 consent to the relief requested by BCBSIL herein and do not consent to the redacted versions of  
17 their Motion to Compel and declaration in support.

### 18 I. INTRODUCTION AND RELIEF REQUESTED

19 In this action, Plaintiffs have brought claims on behalf of themselves and a class of  
20 individuals seeking coverage for transgender-related services under self-insured plans governed  
21 by the Employee Retirement Income Security Act of 1974 (“ERISA”) for which BCBSIL serves  
22 as a third-party administrator (“TPA”). Plaintiffs allege that this Court should invalidate  
23 exclusions for transgender-related services because they violate prohibitions against  
24 discrimination on the basis of sex in Section 1557 of the Affordable Care Act (“ACA”), which  
25 incorporates Title IX of the federal Civil Rights Act of 1964.

26 On June 30, 2021, this Court entered a Stipulated Protective Order [Dkt. 25], which  
27 states, in relevant part:

28 4.3 Filing Confidential Material. Before filing confidential material or  
referencing such material in court filings, the filing party shall confer with the  
designating party to determine whether the designating party will remove the

1 confidential designation, whether the document can be redacted, or whether a  
2 motion to seal or stipulation and proposed order is warranted. Local Rule 5(g) sets  
forth the procedures that must be followed and the standards that will be applied  
when a party seeks permission from the court to file material under seal.

3 The Motion to Compel Briefing meets the definition of “confidential” documents as it  
4 contains BCBSIL’s proprietary business information, and it should not become a part of the  
5 public record in this action.

## 6 II. APPLICABLE LAW AND CERTIFICATION

7 Based on the historical right for the public to be able to access court records and  
8 documents, there is a strong presumption that documents should not be sealed and access to the  
9 documents filed with the court should be granted. *Kamakana v. City of Honolulu*, 447 F.3d 1172,  
10 1178 (9th Cir. 2006). But the right to access is not absolute, and the presumption may be  
11 overcome by providing “compelling reasons” for keeping documents secret that “outweigh the  
12 public’s interest in disclosure.” *Id.* at 1178–79. “Two standards generally govern motions to seal  
13 documents[.]” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 677 (9th Cir. 2010).

14 [J]udicial records attached to dispositive motions [are treated] differently from  
15 records attached to non-dispositive motions. Those who seek to maintain the  
16 secrecy of documents attached to dispositive motions must meet the high  
17 threshold of showing that “compelling reasons” support secrecy. A “good cause”  
showing under Rule 26(c) will suffice to keep sealed records attached to non-  
dispositive motions.

18 *Kamakana*, 447 F.3d at 1180. Because BCBSIL seeks to seal briefing containing proprietary  
19 business information relating to a non-dispositive motion, the “good cause” standard applies to  
20 BCBSIL’s motion.

21 There is good cause to seal the Motion to Compel Briefing, which contains confidential  
22 and proprietary information concerning ERISA self-funded group plans administered by BCBSIL  
23 for non-parties. The dissemination of this information, which is not publicly available and was  
24 designated as Confidential pursuant to the Stipulated Protective Order, may cause BCBSIL  
25 competitive harm. In *Nixon v. Warner Communications, Inc.*, the Supreme Court held that a  
26 party may overcome the presumption in favor of public access to judicial records by  
27 demonstrating the pages contain “sources of business information that might harm a litigant’s  
28

1 competitive standing.” 435 U.S. 589, 598 (1978). The risk of competitive harm is widely  
2 accepted as a compelling reason to grant a motion to seal. *See e.g., Ctr. for Auto Safety v.*  
3 *Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (holding that the release of a document  
4 that may harm a litigant’s competitive standing is a compelling reason to seal a document); *Apple*  
5 *Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1221-22 (Fed. Cir. 2013) (holding that one  
6 factor that weighs in favor of sealing documents is when the release of the documents will cause  
7 competitive harm to a business).

8 The dissemination of the information in the Motion to Compel Briefing would also harm  
9 the interests of non-parties. “Confidential business information has long been recognized as  
10 property.” *Carpenter v. United States*, 484 U.S. 19, 26 (1987). Non-parties have a significant  
11 interest in keeping confidential documents related to or created by those non-parties. *Kalberer v.*  
12 *Am. Fam. Mut. Ins. Co.*, 2:13-cv-02278-JCM-NJK, 2014 WL 5780383, at \*1 (D. Nev. Nov. 5,  
13 2014). Further, courts have discretion to seal documents concerning non-parties in order to  
14 protect the privacy interests of those non-parties. *Cowan v. GE Cap. Retail Bank*, No. 13-cv-  
15 03935-BLF, 2015 WL 1324848, at \*3 (N.D. Cal. Mar. 24, 2015); *see also Seiter v. Yokohama*  
16 *Tire Corp.*, No. C08-5578 FDB, 2009 WL 4640624, at \*1 (W.D. Wash. Dec. 7, 2009) (sealing  
17 deposition testimony and documents concerning similarly-situated non-parties).

18 Accordingly, the privacy interests of BCBSIL and the non-parties for whom BCBSIL  
19 administers ERISA self-funded plans outweigh the general public right to access, and BCBSIL  
20 should be permitted to file these exhibits under seal.

21 Gwendolyn Payton and Stephanie Bedard, counsel for BCBSIL conferred with Ele  
22 Hamburger, counsel for Plaintiffs, via email on June 3, 2022 to attempt to reach an agreement on  
23 the need to file these documents under seal, to minimize the amount of material under seal, and to  
24 explore redaction or other alternatives. Plaintiffs do not consent to the relief requested by  
25 BCBSIL herein and do not consent to the redacted versions of their Motion to Compel Briefing  
26 and declaration in support.

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**III. CONCLUSION**

Accordingly, the Court should grant Defendants’ Motion to Seal the Motion to Compel Briefing and order that these documents be sealed and/or remain under seal.

Respectfully submitted, this 6th day of June, 2022.

KILPATRICK TOWNSEND & STOCKTON LLP

By           /s/ Gwendolyn C. Payton            
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*Counsel for Blue Cross Blue Shield of Illinois*

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, DEFENDANT BLUE CROSS BLUE SHIELD OF ILLINOIS’S MOTION TO SEAL MOTION TO COMPEL BRIEFING, to be filed with the Clerk of the Court via the CM/ECF system. In accordance with their ECF registration agreement and the Court’s rules, the Clerk of the Court will send e-mail notification of such filing to the following attorneys of record:

<p><b>Eleanor Hamburger</b>                  SIRIANNI YOUTZ SPOONEMORE                  HAMBURGER                  3101 WESTERN AVENUE STE 350                  SEATTLE, WA 98121                  206-223-0303                  Fax: 206-223-0246                  Email: ehamburger@sylaw.com</p>	<p><input checked="" type="checkbox"/> by CM/ECF  <input type="checkbox"/> by Electronic Mail  <input type="checkbox"/> by Facsimile Transmission  <input type="checkbox"/> by First Class Mail  <input type="checkbox"/> by Hand Delivery  <input type="checkbox"/> by Overnight Delivery</p>
<p><b>Jennifer C Pizer</b>                  LAMBDA LEGAL DEFENSE AND                  EDUCATION FUND, INC.                  4221 WILSHIRE BLVD., STE 280                  LOS ANGELES, CA 90010                  213-382-7600                  Email: jpizer@lambdalegal.org</p>	<p><input checked="" type="checkbox"/> by CM/ECF  <input type="checkbox"/> by Electronic Mail  <input type="checkbox"/> by Facsimile Transmission  <input type="checkbox"/> by First Class Mail  <input type="checkbox"/> by Hand Delivery  <input type="checkbox"/> by Overnight Delivery</p>
<p><b>Omar Gonzalez-Pagan</b>                  LAMBDA LEGAL DEFENSE AND                  EDUCATION FUND, INC. (NY)                  120 WALL STREET                  19TH FLOOR                  NEW YORK, NY 10005                  212-809-8585                  Email: ogonzalez-pagan@lambdalegal.org</p>	<p><input checked="" type="checkbox"/> by CM/ECF  <input type="checkbox"/> by Electronic Mail  <input type="checkbox"/> by Facsimile Transmission  <input type="checkbox"/> by First Class Mail  <input type="checkbox"/> by Hand Delivery  <input type="checkbox"/> by Overnight Delivery</p>

DATED this 6th day of June, 2022.

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Gwendolyn C. Payton  
 Gwendolyn C. Payton, WSBA #26752

*Counsel for Blue Cross Blue Shield of Illinois*

# **EXHIBIT A**

The Honorable Robert J. Bryan

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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**

## 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.

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

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

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

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

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

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

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

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

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

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

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

1 ■ plans that have a similar exclusion to that in the CHI plan, but none of the  
2 contracts or BPAs were produced, as requested in RFP No. 12.

3 We need at least some of these contracts and BPAs for the deposition on Friday.  
4 We need to understand how BCBSIL identified the ■ plans, and whether and  
5 how the language in these identified plans differs, since BCBSIL asserts that the  
6 language in the proposed class definition is “vague, ambiguous and not easily  
7 ascertainable” and defendant denied our allegations of commonality and typicality  
8 in its Answer.

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

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

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

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

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

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

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

### 15 III. ARGUMENT

#### 16 A. Legal Standard.

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

#### 23 B. Defendant’s Objection to Responding to ROGs Nos. 3, 6, and 8 and 24 Producing Documents in Response to RFP Nos. 12–14 Was Untimely.

25 Defendant did not inform Plaintiffs that it would not identify or produce copies of the [REDACTED]  
 26 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

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

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

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

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

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

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

8 Discovery in support of class certification is appropriate where it is necessary to properly  
9 define the proposed class and possibly subclasses. *Kamm v. California City Development Co.*,  
10 509 F.2d 205, 210 (9th Cir. 1975). Where, as here, the material evidence to establish class  
11 certification is within the sole possession of Defendant, class discovery is appropriate. *Doninger*  
12 *v. Pacific Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir. 1977). While the plaintiff bears the  
13 burden of showing that discovery is likely to produce persuasive information substantiating the  
14 class allegations, this standard is not difficult to meet. *See id.* In this situation, “[r]elevancy is  
15 broadly construed” such that a court should permit discovery “if there is ‘any possibility’ that the  
16 information sought may be relevant to the claim or defense of any party.” *Cedano v. Thrifty*  
17 *Payless, Inc.*, 2011 U.S. Dist. LEXIS 155956, at \*23 (D. Or. May 9, 2011).

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

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

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

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

18 **D. The Discovery Sought is Not Burdensome.**

19 BCBSIL identified [REDACTED] specific plans that contain a gender-affirming care exclusion.  
20 Hamburger Decl., *Exh. 6*, Response to ROG 6. The plans are known to Defendant and have been  
21 reviewed by defense counsel. Their production cannot be unduly burdensome at this time since  
22 they are now identified. Nonetheless, Plaintiffs’ counsel offered that a sampling of the SPDs and  
23 BPAs could be produced, rather than all [REDACTED]. Defense counsel also rejected this approach as  
24 “unnecessary” despite Plaintiffs’ obligation to demonstrate commonality and typicality for class  
25 certification. At one point, defense counsel objected to production of the plans because it would  
26

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

5 **E. Defendant Must Produce an Adequate Privilege Log.**

6 Defendant produced a privilege log that reflects documents withheld pursuant to a joint  
7 defense agreement, long before this lawsuit was filed. *See id.*, *Exh. 16*. The party asserting  
8 attorney-client privilege bears the burden of establishing both the attorney-client relationship and  
9 the privileged nature of the communication. *United States v. Graf*, 610 F.3d 1148, 1156 (9th Cir.  
10 2010). “Because it impedes full and free discovery, the attorney-client privilege is strictly  
11 construed.” *United States v. Ruehle*, 583 F.3d 600, 607 (9th Cir. 2009). To effectively assert the  
12 privilege, the party must make a *prima facie* showing that the attorney-client privilege applies to  
13 the disputed documents, typically pursuant to a privilege log. *In re Grand Jury Investigation*, 974  
14 F.2d 1068, 1071 (9th Cir. 1992). A *prima facie* showing is demonstrated when a privilege log, on  
15 its own or together with the unredacted portions of the disputed documents, identifies: “(a) the  
16 attorney and client involved, (b) the nature of the document, (c) all persons or entities shown on  
17 the document to have received or sent the document, (d) all persons or entities known to have  
18 been furnished the document or informed of its substance, and (e) the date the document was  
19 generated, prepared, or dated.” *Id.*

20 Since the purpose of a privilege log is to provide both the opposing party and the Court  
21 with enough information to evaluate the claim of privilege, “[f]ailure to provide sufficient  
22 identification waives the privilege.” *Baxter Healthcare Corp. v. Fresenius Med. Care Holding,*  
23 *Inc.*, 2008 U.S. Dist. LEXIS 125550, at \*10 (N.D. Cal., Dec. 12, 2008). Here, the privilege log  
24 produced by Defendant does not identify the attorney(s) involved in the communication, the  
25 nature of the document, and all of the parties or entities known to have been furnished the  
26

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

3 **F. The Documents May Be Subject to ERISA’s Fiduciary Exception to**  
4 **Attorney-Client Privilege.**

5 The disputed documents in the privilege log, even if attorney-client privileged, may be  
6 subject to the fiduciary exception under ERISA, since they appear to be between a Plan Sponsor  
7 and Plan Administrator concerning plan administration. The Ninth Circuit has held that, in the  
8 ERISA context, a “fiduciary is disabled from asserting the attorney-client privilege against plan  
9 beneficiaries on matters of plan administration.” *U.S. v. Mett*, 178 F.3d 1058, 1063 (9th Cir. 1999).  
10 The exception applies to all plan fiduciaries. *Stephan v. Unum Life Ins. Co.*, 697 F.3d 917, 931–  
11 32 (9th Cir. 2012). The exception exists because the plan fiduciary is only a representative for the  
12 beneficiaries of the Plan: “[I]t is not the fiduciary but rather the plan beneficiary that is the real  
13 client. Thus, attorney-client privilege is maintained; there is only a different understanding of the  
14 identity of the client.” *Sender v. Franklin Res., Inc.*, 2016 U.S. Dist. LEXIS 42739, at \*2–3 (N.D.  
15 Cal. Mar. 30, 2016) (internal citations and quotations omitted).

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

20 [T]he case authorities mark out two ends of a spectrum. On the one hand, where  
21 an ERISA trustee seeks an attorney’s advice on a matter of plan administration and  
22 where the advice clearly does not implicate the trustee in any personal capacity,  
23 the trustee cannot invoke the attorney-client privilege against the plan  
24 beneficiaries. On the other hand, where a plan fiduciary retains counsel in order to  
25 defend herself against the plan beneficiaries (or the government acting in their  
26 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’

1 part and aimed at advising the trustees how far they were in peril.” In *Stephan*, on the other hand,  
2 the “documents sought f[e]ll on the other end of the *Mett* spectrum” because “the disputed  
3 documents offer[ed] advice solely on how the Plan ought to be interpreted.” *Stephan*, 697 F.3d at  
4 932. The documents in *Stephan* comprised “notes of conversations between Unum claims analysts  
5 and Unum’s in-house counsel about how the insurance policy under which Stephan was covered  
6 ought to be interpreted.” *Id.* The Ninth Circuit held that such documents concerned plan  
7 administration and did not “address any potential civil or criminal liability Unum might face, nor  
8 is there any indication that they were prepared with such liability in mind.” *Id.* Further, the  
9 documents “were prepared to advise Unum claims analysts about how best to interpret the Plan,  
10 and were communicated to the analysts before any final determination on Stephan’s claim had  
11 been made.” *Id.* at 933. Timeliness is also a critical factor: the Ninth Circuit held “that it is not  
12 until after the final determination—that is, after the final administrative appeal—that the interests  
13 of the Plan fiduciary and the beneficiary diverge for purposes of the fiduciary exception.” *Stephan*,  
14 697 F.3d at 933. Before the final denial, the interests of a Plan fiduciary and its beneficiary are  
15 *not* sufficiently adverse to override the fiduciary exception. *Id.*

16 **G. *In Camera* Review is Required.**

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

24 *In camera* review is necessary to determine whether each redacted document relates to  
25 plan administration rather than plan liability, although none involve communications from  
26

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

3 The parties have met and conferred to discuss the privilege log, but defense counsel did  
4 not change the designation of any of the disputed documents. Hamburger Decl., ¶10. The parties’  
5 counsel discussed that *in camera* review might resolve the dispute.<sup>1</sup>

6 **IV. CONCLUSION**

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

15 DATED: May 19, 2022.

16 SIRIANNI YOUTZ  
17 SPOONEMORE HAMBURGER PLLC

18 /s/ Eleanor Hamburger

19 Eleanor Hamburger (WSBA #26478)  
20 Daniel S. Gross (WSBA #23992)  
21 3101 Western Avenue, Suite 350  
22 Seattle, WA 98121  
23 Tel. (206) 223-0303; Fax (206) 223-0246  
24 Email: ehamburger@sylaw.com  
25 dgross@sylaw.com

26 <sup>1</sup> 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).

LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.

/s/ Omar Gonzalez-Pagan

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*Attorneys for Plaintiffs*

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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 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, any of the disputed documents that relate to Defendant’s administration of

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

3 DATED this \_\_\_\_\_ day of June, 2022.

4  
5 \_\_\_\_\_  
6 Robert J. Bryan  
7 United States District Judge

8 Presented by:

9 SIRIANNI YOUTZ  
10 SPOONEMORE HAMBURGER PLLC

11 /s/ Eleanor Hamburger  
12 Eleanor Hamburger (WSBA #26478)  
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19 LAMBDA LEGAL DEFENSE AND  
20 EDUCATION FUND, INC.

21 /s/ Omar Gonzalez-Pagan  
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*Attorneys for Plaintiffs*

# **EXHIBIT B**

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

DECLARATION OF ELEANOR  
HAMBURGER IN SUPPORT OF  
PLAINTIFFS’ MOTION TO COMPEL

**Note on Motion Calendar:  
June 3, 2022**

I, Eleanor Hamburger, declare under penalty of perjury and in accordance with the laws of the United States and State of Washington that:

1. I am a partner at Sirianni Youtz Spoonemore Hamburger and am one of the attorneys for plaintiffs in this action.

2. Plaintiffs served their first discovery requests on June 18, 2021. Defense counsel requested, and Plaintiffs’ counsel approved, multiple extensions to Defendant’s response, which was provided on December 10, 2021. No documents were provided with Defendant’s response. Defendant provided some responsive documents between December 2021 and May 2022.

3. Defendant provided a timely but incomplete response to Plaintiffs’ second discovery requests but did not provide any responsive documents. Defendant supplemented its second discovery requests three times in May 2022, leading up to the May 13, 2022 deposition of

1 BCBSIL’s first Rule 30(b)(6) witness. The remaining Rule 30(b)(6) witnesses will be deposed on  
2 June 2 and 28, 2022.

3 4. Plaintiffs served two additional sets of discovery, to which Defendant provided its  
4 responses and responsive documents. This discovery dispute does not address Defendant’s  
5 responses to the third and fourth discovery requests.

6 5. Defendant first served its privilege log, together with additional documents that it  
7 concluded were not privileged, on May 10, 2022.

8 6. On May 3, 2022, Plaintiffs’ counsel emailed defense counsel inquiring about  
9 whether BCBSIL viewed the discovery production as complete, since it did not include any  
10 documents regarding plans other than the CHI plan. Plaintiffs’ counsel alerted defense counsel in  
11 writing, in advance of the deposition of the first Rule 30(b)(6) witness, and during the deposition,  
12 that Plaintiffs reserved the right to recall the witness to pose questions regarding the disputed  
13 discovery, once this discovery dispute is resolved.

14 7. Until May 11, 2022, Plaintiffs’ counsel understood that Defendant would produce  
15 the summary plan descriptions and Benefit Program Applications (BPAs) of plans containing  
16 exclusions of gender-affirming care. The parties’ counsel had regular discovery conferences to  
17 discuss the timing of Defendant’s document production and supplementation of the discovery  
18 responses. During these meetings, BCBSIL never stated that the actual plans and BPAs would  
19 only be produced subject to a court order. If Defendant had stated its position originally, in  
20 December 2021, or at any time during the previous five months, Plaintiffs would have moved to  
21 compel so that the information would have been available well in advance of the Rule 30(b)(6)  
22 deposition.

23 8. The BPAs for the CHI plan assert that the gender-affirming care exclusion was  
24 permitted, despite the requirements of the Affordable Care Act’s anti-discrimination law, due to  
25 protections of the “religious freedom” of CHI. BCBSIL refused to produce the BPAs for any other  
26 plans that contain a gender-affirming care exclusion. BCBSIL’s Rule 30(b)(6) witness testified

1 that the language in the other plans' BPAs was "similar" even though the other plans included  
2 non-religious employers.

3 9. During the discovery conference on May 11, 2022, defense counsel refused to  
4 produce the actual summary plan documents and BPAs to Plaintiffs because such production  
5 would require BCBSIL to obtain permission for the disclosure from each of the [REDACTED] affected  
6 employers. Defense counsel did not identify why such permission was required, nor why no such  
7 permission had been obtained during the many months that discovery was pending. Plaintiffs'  
8 counsel knows of no law that requires that summary plan descriptions of employee benefit plans  
9 be maintained confidentially.

10 10. During the May 11, 2022 discovery conference, the parties' counsel also discussed  
11 the privilege log, but defense counsel did not change any of the assertions of privilege over the  
12 disputed documents. Defense counsel did not object to the possibility of having *in camera* review  
13 to resolve the dispute regarding the documents withheld in the privilege log.

14 11. Attached are true and correct copies of the following documents, with highlighting  
15 where appropriate for the Court's convenience:

Exhibit	Description	Date
1	Plaintiff's First Interrogatories and Requests for Production of Documents to Defendant Blue Cross and Blue Shield of Illinois	June 18, 2021
2	Defendant BCBSIL's Responses and Objections to Plaintiff's First Interrogatories and Requests for Production of Documents	December 10, 2021
3	Plaintiffs' Second Discovery Requests to Defendant BCBSIL	November 9, 2021
4	Defendant BCBSIL's Responses and Objections to Plaintiffs' Second Discovery Requests	December 10, 2021
5	Defendant BCBSIL's Supplemental Responses and Objections to Plaintiffs' Second Discovery Requests	May 4, 2022

<b>Exhibit</b>	<b>Description</b>	<b>Date</b>
<b>6</b>	Defendant BCBSIL's Second Supplemental Responses and Objections to Plaintiffs' Second Discovery Requests	May 9, 2022
<b>7</b>	Defendant BCBSIL's Third Supplemental Responses and Objections to Plaintiffs' Second Discovery Requests	May 12, 2022
<b>8</b>	Email chain between Gwendolyn Payton and Eleanor Hamburger re: Defendant BCBSIL's Supplemental documents to RFP No. 12	May 11, 2022
<b>9</b>	Email chain between Gwendolyn Payton and Eleanor Hamburger re: Responses to BCBSIL's First Interrogatories	January 27, 2022
<b>10</b>	Letter from Eleanor Hamburger to Gwendolyn Payton and Stephanie Bedard re: status of discovery	March 9, 2022
<b>11</b>	Email from Eleanor Hamburger to Gwendolyn Payton and Stephanie Bedard re: Follow up to meet and confer on Friday March 11, 2022	March 15, 2022
<b>12</b>	Emails from Eleanor Hamburger to Stephanie Bedard and Gwendolyn Payton re: Discovery conference	April 22, 2022
<b>13</b>	Email from Eleanor Hamburger to Stephanie Bedard and Gwendolyn Payton re: Defendants' production re Rule 30(b)(6) deposition	May 3, 2022
<b>14</b>	Email chain between Gwendolyn Payton and Eleanor Hamburger re: Supplemental documents to RFP No. 12	May 10, 2022
<b>15</b>	Emails from Eleanor Hamburger to Gwendolyn Payton and Stephanie Bedard re: Meet and Confer	May 11, 2022
<b>16</b>	BCBSIL Privilege Log	May 10, 2022

DATED: May 19, 2022, at Seattle, Washington.

/s/ Eleanor Hamburger

Eleanor Hamburger (WSBA #26478)  
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 Attorneys for Plaintiffs

# Exhibit 1

HON. 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

PLAINTIFF'S FIRST  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
TO DEFENDANT BLUE CROSS AND  
BLUE SHIELD OF ILLINOIS

**TO:** Defendant BLUE CROSS AND BLUE SHIELD OF ILLINOIS;

**AND TO:** Gwendolyn C. Payton, KILPATRICK TOWNSEND & STOCKTON LLP,  
its attorneys

Pursuant to Federal Rule of Civil Procedure 33 and 34, you are requested to respond to each of the following interrogatories and requests for production, in accordance with the definitions and instructions set forth below.

The instructions and definitions in sections B and C, respectively, are used in and govern the interrogatories in section D and requests for production in section E, and are incorporated by reference into those interrogatories and requests for production. All such interrogatories and requests for production must be answered with regard to the following instructions and definitions.

**A. TIME AND PLACE OF PRODUCTION**

1 The requested material should be produced at 5:00 p.m. at the offices of Sirianni  
2 Youtz Spoonemore Hamburger within 30 days of the date of service of these requests, as  
3 required by Fed. R. Civ. P. 33 and 34.  
4

**B. INSTRUCTIONS**

5 1. Unless otherwise indicated, the following requests for production and  
6 interrogatories request information and documents generally from August 10, 2012  
7 through the date that this litigation is fully and finally resolved. Information relating to  
8 events, transactions or situations occurring during such period or documents generated  
9 during same must be provided.

10 2. These requests are intended to draw upon the combined knowledge of  
11 Blue Cross and Blue Shield of Illinois and any of its agents, employees, or attorneys  
12 (collectively "Defendant" or "BCBSIL"). In responding to the requests, the Defendant  
13 must furnish all documents available to it or any of its agents, employees, or attorneys,  
14 including documents that are in the possession of the Defendant or are otherwise subject  
15 to its control.

16 3. These discovery requests are continuing in nature. In accordance with  
17 Federal Rule of Civil Procedure 26(e), if additional information is discovered at any time,  
18 these requests are directed to that information, and Defendant is requested to provide it  
19 immediately. Original documents responsive to these requests for production are to be  
20 produced for inspection at the offices of Sirianni Youtz Spoonemore Hamburger, 701  
21 Fifth Avenue, Suite 2560, Seattle, Washington, 30 days from the date of service of these  
22 requests.

23 4. If it is claimed that a response, in whole or in part, to any request for  
24 production is privileged or otherwise protected from discovery, then with respect to  
25 *each* such response:  
26

1 a. State with specificity the reason or reasons for the objection and/or the  
2 nature of any privilege asserted;

3 b. State the name and address of each person having knowledge of the factual  
4 basis, if any, upon which the privilege or other objection is asserted; and, if a document;

5 c. Specify:

6 i. The date of the document;

7 ii. The nature or type of the document (*i.e.*, whether letter,  
8 telegram, memorandum, etc.);

9 iii. The name and address of each individual who prepared the  
10 document;

11 iv. The name and address of each individual to whom the  
12 document, or a copy thereof, has been at any time provided;

13 v. The name and address of each person from whom the  
14 document has been obtained by you;

15 vi. The name and address of the individual or entity having  
16 possession of the original of the document (or if the whereabouts of the original is  
17 unknown, the name and address of each person or entity known or believed to have a  
18 copy or copies thereof);

19 vii. All other information necessary to identify the document  
20 with sufficient particularity to meet the requirements for its inclusion in a motion for  
21 production pursuant to FRCP 37; and

22 viii. If such document was, but is no longer, within your care,  
23 custody or control, state what disposition was made of it, the reason for such disposition,  
24 and the date upon which it was so disposed.

**C. DEFINITIONS**

As used in the following requests:

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1. Whenever reference is made to the “Defendant,” “you” or “your,” it is to be understood to include any and all of Blue Cross and Blue Shield of Illinois (“BCBSIL”) and its subsidiaries, predecessors in interest, directors, officers, employees, agents, attorneys (including its inside/house counsel and outside or retained counsel), accountants, consultants and other representatives.

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2. The term “document” means the original (or duplicate, identical copies when originals are not available), and any nonidentical copies of writings of every kind and description whether inscribed by hand or by mechanical, electronic, magnetic, microfilm, photographic or other means, as well as phonic (such as tape recordings) or visual reproductions of oral statements, conversations or events, and including but not limited to, correspondence, notes, minutes, internal messages and memoranda, reports, compilations, studies, tables and tabulations, tallies, maps, diagrams, plans, pictures, computer-generated, computer-stored or computer-readable data, electronic mail, computer printouts, teletype messages, bills of lading and other communication. “Documents” includes the file, folder tabs and/or containers and labels appended thereto associated with each such aforesaid original and copy. *With respect to electronic mail or information, these requests reach electronic information that may have been “deleted” from a person’s individual CPU, but that still exists in retrievable form on an individual’s CPU, or on the Defendant’s servers (or on any historical back-up copies of the individual’s CPU, or the servers). Such information remains in the care, custody and control of the Defendant and must be searched and/or disclosed if responsive to these requests.*



1            INTERROGATORY NO. 4: Please identify all individuals who participated in  
2 any way in the creation, drafting and/or preparation of the Gender Assignment Surgery  
3 and Gender Reassignment Surgery with Related Services medical policy. *See* Dkt. No.  
4 1-7.

5            ANSWER:

6  
7  
8            INTERROGATORY NO. 5: Please identify all individuals who participated in  
9 any way in the creation, drafting and/or preparation of the Benefit Program Application  
10 provision on coverage and/or the exclusion of treatment for gender dysphoria  
11 (including but not limited to any reference to the Transgender Reassignment Surgery  
12 exclusion) between Catholic Health Initiatives and Defendant at any time since January  
13 1, 2014, whether employed by BCBSIL, the Plan, Catholic Health Initiatives or another  
14 entity.

15            ANSWER:

16  
17            **E. REQUESTS FOR PRODUCTION**

18            Please produce for inspection and copying:

19            REQUEST FOR PRODUCTION NO. 1: All documents relating to C.P.'s requests  
20 for coverage of health care services related to his gender dysphoria, including but not  
21 limited to BCBSIL's claims processing of the same, its denials of coverage for certain  
22 health care services, including all documents reviewed or consulted by defendant in the  
23 process of administering C.P.'s claims, and C.P.'s administrative appeals.

1           RESPONSE:

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5           REQUEST FOR PRODUCTION NO. 2: All documents obtained by Defendant  
6 from C.P.'s medical providers related to his gender dysphoria.

7           RESPONSE:

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11           REQUEST FOR PRODUCTION NO. 3: All contracts, applications, or other  
12 agreements between Catholic Health Initiatives and/or Catholic Health Initiatives  
13 Medical Plan and BCBSIL in effect as of January 1, 2014, up to and including the present.

14           RESPONSE:

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18           REQUEST FOR PRODUCTION NO. 4: All documents, emails, and other  
19 communications between Catholic Health Initiatives and/or Catholic Health Initiatives  
20 Medical Plan and BCBSIL relating to covering and/or excluding treatment related to  
21 gender dysphoria from the Plan, including but not limited to, treatment with puberty  
22 blockers such as Vantas Implants, testosterone treatment, and chest surgery for  
23 adolescents.

1           RESPONSE:

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5           REQUEST FOR PRODUCTION NO. 5: All Independent Review Organization  
6 decisions related to treatment of gender dysphoria in BCBSIL plans at any time since  
7 January 1, 2014. Defendant may produce redacted copies of these documents.

8           RESPONSE:

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11           REQUEST FOR PRODUCTION NO. 6: All documents provided to, or created by  
12 or for, employees or agents of BCBSIL that describe, explain, or otherwise relate to its  
13 administration of benefits for and/or exclusions of health care services to treat gender  
14 dysphoria at any time since January 1, 2014. This request includes but is not limited to:  
15 training manuals, policy manuals, information sheets, internal memoranda, meeting  
16 minutes, policy positions, committee reviews, notes, correspondence, implementation  
17 plans, etc. including without limitation any research, reports, analyses, studies, etc. upon  
18 which BCBSIL's medical policies, and/or coverage exclusions are or were based.

19           RESPONSE:

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22           REQUEST FOR PRODUCTION NO. 7: All actuarial material, or other financial  
23 projections, analyses, worksheets and assumption papers relating to the cost, projected  
24 or actual, or financial impact of providing coverage for medically necessary treatment  
25 for gender dysphoria for enrollees in BCBSIL ERISA self-funded group plans.

1           RESPONSE:

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4           REQUEST FOR PRODUCTION NO. 8: An organizational chart for BCBSIL (and  
5 its subsidiaries/component entities, if applicable) for the years 2014 to the present.

6           RESPONSE:

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10          REQUEST FOR PRODUCTION NO. 9: All documents provided to, or created by  
11 or for, employees or agents of BCBSIL that describe, explain, or otherwise relate to  
12 coverage and/or the exclusion of treatment for gender dysphoria in its insured and/or  
13 self-funded or claims administered plans. This request includes but is not limited to:  
14 training manuals, policy manuals, information sheets, internal memoranda, meeting  
15 minutes, policy positions, committee reviews, notes, correspondence, implementation  
16 plans, etc. including without limitation any research, reports, analyses, studies, etc. upon  
17 which BCBSIL's coverage determinations of treatment for gender dysphoria are based.

18          RESPONSE:

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22          REQUEST FOR PRODUCTION NO. 10: To the extent not already provided,  
23 please produce all copies of the "Benefit Program Application" submitted by the Plan  
24 and/or Catholic Health Initiatives to Defendant at any time since January 1, 2014  
25  
26

1            RESPONSE:

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4            REQUEST FOR PRODUCTION NO. 11: To the extent not already provided,  
5 please produce all documents provided by the Plan and/or Catholic Health Initiatives  
6 that reflects any determination that BCBSIL could administer the Plan in a manner that  
7 did not and/or does not comply with the Affordable Care Act’s Section 1557, 42 U.S.C.  
8 §18116.

9            RESPONSE:

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17            DATED: June 18, 2021.

18            SIRIANNI YOUTZ  
19            SPOONEMORE HAMBURGER PLLC

20                      /s/Eleanor Hamburger            
21            Eleanor Hamburger (WSBA #26478)  
22            3101 Western Avenue, Suite 350  
23            Seattle, WA 98121  
24            Tel. (206) 223-0303; Fax (206) 223-0246  
25            Email: ehamburger@syllaw.com

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LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
Omar Gonzalez-Pagan, *pro hac vice*  
120 Wall Street, 19th Floor  
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*Attorneys for Plaintiffs*

## **Exhibit 2**

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,  
  
Plaintiff,  
  
vs.  
  
BLUE CROSS BLUE SHIELD OF  
ILLINOIS,  
  
Defendants.

Case No. 3:20-cv-06145-RJB

**RESPONSES AND OBJECTIONS TO  
PLAINTIFF’S FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT BLUE  
CROSS AND BLUE SHIELD OF ILLINOIS**

**TO:** Plaintiffs C. P., Patricia Pritchard, and Nolle Pritchard.

**AND TO:** SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC and LAMBDA  
LEGAL DEFENSE AND EDUCATION FUND, INC., their attorneys.

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Defendant Blue Cross Blue  
Shield of Illinois (“BCBSIL”) hereby objects and responds to Plaintiffs’ First Interrogatories and  
Requests for Production (the “Requests”) as follows:

**A. GENERAL OBJECTIONS**

1. BCBSIL objects to the Requests to the extent they are overly broad, unduly  
burdensome, oppressive, redundant, vague, ambiguous, and/or seek to impose on BCBSIL  
obligations greater than or different from those imposed by the Federal Rules of Civil Procedure.

2. BCBSIL objects to the Requests to the extent they impose a burden on it that is

1 disproportionate to the needs of the litigation.

2         3. BCBSIL interprets the Requests as excluding documents and information subject  
3 to the attorney-client privilege, work-product privilege, joint-defense/common-interest privilege,  
4 and any other applicable privileges or protections.

5         5. BCBSIL objects to the Requests to the extent they require BCBSIL to use more  
6 than reasonable diligence in preparing its objections and responses based on an examination of  
7 those files that reasonably may be expected to yield responsive information and an inquiry of  
8 those persons who reasonably may be expected to possess responsive information.

9         6. BCBSIL objects to the Requests to the extent the discovery sought is  
10 unreasonably cumulative, duplicative, or obtainable from some other source that is more  
11 convenient, less burdensome, or less expensive, including if the discovery sought is already in  
12 the Plaintiffs' possession.

13         7. BCBSIL objects to each and every Request to the extent it seeks to require  
14 BCBSIL to identify or produce documents not currently in its possession, custody, or control, on  
15 the grounds that such a request seeks to require more of BCBSIL than any obligation imposed by  
16 law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense, or  
17 would seek to impose upon it an obligation to discover information or materials from third  
18 parties or sources that are equally accessible to the Plaintiffs.

19         8. BCBSIL objects to the Requests to the extent they seek information outside the  
20 applicable three-year statute of limitations for Plaintiffs' Section 1557 claims. *See Smith v.*  
21 *Highland Hosp. of Rochester*, No. 17-CV-6781-CJS, 2018 WL 4748187, at \*3 (W.D.N.Y. Oct.  
22 2, 2018); *Solis v. Our Lady of the Lake Ascension Cmty. Hosp., Inc.*, No. CV 18-56-SDD-RLB,  
23 2020 WL 2754917, at \*4 (M.D. La. May 27, 2020); *Ward v. Our Lady of the Lake Hosp., Inc.*,  
24 No. CV 18-00454-BAJ-RLB, 2020 WL 414457, at \*2 (M.D. La. Jan. 24, 2020); RCW  
25 4.16.080(2). Moreover, Plaintiffs' class claims, added via amended complaint, do not relate back  
26 to the filing of the initial complaint because BCBSIL was not put on sufficient notice at the time  
27 that Plaintiffs intended to seek relief on a class-wide basis. *See McClelland v. Deluxe Fin. Servs.*,

1 *Inc.*, 431 F. App'x 718, 731 (10th Cir. 2011); *Corns v. Laborers Int'l Union of N. Am.*, No. 09-  
2 *CV-4403 YGR*, 2014 WL 1319363, at \*5 (N.D. Cal. Mar. 31, 2014) (finding the notice  
3 requirement unmet where the original complaint did not give “clear notice” of plaintiff's intent to  
4 allege and certify a class); *Perry v. Beneficial Finance Co. of N.Y.*, 81 F.R.D. 490, 495  
5 (W.D.N.Y. 1979) (amended complaint adding class claims did not relate back to initial  
6 individual complaint). Nonetheless, per the agreement between the parties and for discovery  
7 purposes only, BCBSIL will conduct and produce discovery from November 23, 2016 to the  
8 present.

9 10. BCBSIL incorporates by reference these “General Objections” into each of the  
10 Specific Responses and Objections set forth below, as if fully set forth therein.

### 11 **B. OBJECTIONS TO INSTRUCTIONS**

12 1. BCBSIL objects to Instruction One because it purports to require BCBSIL to  
13 provide documents or information outside of its own possession, custody or control. BCBSIL will  
14 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
15 to it, in accordance with the Federal Rules of Civil Procedure.

16 2. BCBSIL objects to Instruction Two because it purports to require BCBSIL to  
17 provide documents or information outside of its own possession, custody or control. BCBSIL will  
18 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
19 to it, in accordance with the Federal Rules of Civil Procedure.

### 20 **C. OBJECTIONS TO DEFINITIONS**

21 1. BCBSIL objects to the terms “Defendant,” “you” or “your,” as overly broad and as  
22 calling for information outside of its own possession, custody, or control. BCBSIL also objects  
23 that these terms as defined seek information protected by the attorney-client privilege, work  
24 product doctrine, or any other applicable privilege or protection.

25 2. BCBSIL objects that the term “Plan,” as defined, fails to identify a specific policy  
26 year. BCBSIL interprets this term to mean the Summary Plan Description, with an effective date  
27

1 of January 1, 2019, attached as Appendix A to the Amended Complaint (Doc. 38, the  
2 “Complaint”).

3 **D. INTERROGATORIES**

4 **INTERROGATORY NO. 1: Please identify all individuals who had any role in the**  
5 **creation, drafting and/or administering the “Transgender Reassignment Surgery” exclusion**  
6 **in the Plan at any time. See Dkt. No. 1-1, p. 61.**

7 ANSWER: BCBSIL objects to this Interrogatory to the extent it seeks information  
8 protected by the attorney-client privilege, the work product doctrine, and/or other applicable  
9 privileges. BCBSIL further objects that the term “Plan,” as defined, fails to identify a specific  
10 policy year. BCBSIL interprets this term to mean the Summary Plan Description attached as  
11 Appendix A to the Complaint, with an effective date of January 1, 2019. BCBSIL further objects  
12 to the terms “creation” and “administering” as vague and ambiguous. BCBSIL also objects to this  
13 Interrogatory as overly broad and unduly burdensome in seeking the identification of “all”  
14 BCBSIL employees who are even tangentially involved in any policy-making or decision-making  
15 concerning the approval or denial of an exclusion in the Plan, without regard to the materiality of  
16 each such person’s knowledge to the facts at issue in this lawsuit. For example, this Interrogatory,  
17 as written, arguably would encompass hundreds of employees who received intake calls from  
18 policyholders and physicians concerning pre-authorization under the Plan.

19 Notwithstanding the foregoing objections, BCBSIL states that it did not create or draft the  
20 exclusion at issue. BCBSIL further states that Telisa Drake has material knowledge of BCBSIL’s  
21 administration of the Plan.

22 **INTERROGATORY NO. 2: Please identify the total number of unique enrollees in**  
23 **the Plan administered by BCBSIL who have received a denial from BCBSIL under the**  
24 **Transgender Surgery Exclusion at any time.**

25 ANSWER: BCBSIL objects to this Interrogatory to the extent it seeks information  
26 protected by the attorney-client privilege, the work product doctrine, and/or other applicable  
27 privileges. BCBSIL also objects to the undefined term “Transgender Surgery Exclusion” as vague

1 and ambiguous. BCBSIL further objects to the phrase “same or similar” as vague and ambiguous.  
2 BCBSIL will interpret the term “Transgender Surgery Exclusion” to mean the exclusion found on  
3 pages 67-68 of the Plan.

4 Notwithstanding the above objections, BCBSIL responds as follows: Two.

5  
6 **INTERROGATORY NO. 3: Please identify any other plans for which BCBSIL**  
7 **administers the same or similar Transgender Reassignment Surgery exclusion.**

8 ANSWER: BCBSIL objects to this Interrogatory as overly broad, unduly burdensome,  
9 and not reasonably calculated to lead to the discovery of admissible evidence in seeking “any other  
10 plans” for which BCBSIL administers the “same or similar” type of exclusion, without regard to  
11 the materiality of such plans to the fact as issue in this lawsuit as alleged in the Complaint. BCBSIL  
12 also objects to the undefined term “Transgender Surgery Exclusion” as vague and ambiguous.  
13 BCBSIL will interpret the term “Transgender Surgery Exclusion” to mean the exclusion found on  
14 pages 67-68 of the Plan. BCBSIL further objects to the term “same or similar” as vague and  
15 ambiguous.

16 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
17 Documents sufficient to show the requested information for ERISA self-funded group health plans  
18 in effect from November 23, 2016 to the present pursuant to Rule 33(d) of the Federal Rules of  
19 Civil Procedure.

20  
21 **INTERROGATORY NO. 4: Please identify all individuals who participated in any**  
22 **way in the creation, drafting and/or preparation of the Gender Assignment Surgery and**  
23 **Gender Reassignment Surgery with Related Services medical policy. See Dkt. No. 1-7.**

24 ANSWER: BCBSIL understands this Interrogatory to refer to the exhibit attached as  
25 Appendix G to the Amended Complaint. BCBSIL objects to this Interrogatory to the extent it seeks  
26 information protected by the attorney-client privilege, the work product doctrine, and/or other  
27 applicable privileges. BCBSIL further objects to this Interrogatory’s use of the terms “creation”

1 and “preparation” which are vague and ambiguous. BCBSIL also objects to this Interrogatory as  
2 unduly burdensome in seeking the identification of “all” individuals who are even tangentially  
3 involved in any policy-making or decision-making concerning BCBSIL’s medical policy titled  
4 “Gender Assignment Surgery and Gender Reassignment Surgery with Related Services,” without  
5 regard to the materiality of each such person’s knowledge to the facts at issue in this lawsuit.

6 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
7 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

8  
9 **INTERROGATORY NO. 5: Please identify all individuals who participated in any**  
10 **way in the creation, drafting and/or preparation of the Benefit Program Application**  
11 **provision on coverage and/or the exclusion of treatment for gender dysphoria (including but**  
12 **not limited to any reference to the Transgender Reassignment Surgery exclusion) between**  
13 **Catholic Health Initiatives and Defendant at any time since January 1, 2014, whether**  
14 **employed by BCBSIL, the Plan, Catholic Health Initiatives or another entity.**

15 ANSWER: BCBSIL objects to this Interrogatory to the extent it seeks information  
16 protected by the attorney-client privilege, the work product doctrine, and/or other applicable  
17 privileges. BCBSIL also objects to this Interrogatory as unduly burdensome in seeking the  
18 identification of “all” individuals who are even tangentially involved in the creation, drafting,  
19 and/or preparation of the Benefit Program Application provision at issue, without regard to the  
20 materiality of each such person’s knowledge to the facts at issue in this lawsuit. BCBSIL also  
21 objects to the terms “creation” and “preparation” as vague and ambiguous. BCBSIL further objects  
22 to the time frame set forth in this Interrogatory as seeking irrelevant information beyond the  
23 applicable statute of limitations.

24 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
25 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

1 **E. REQUESTS FOR PRODUCTION**

2 **REQUEST FOR PRODUCTION NO. 1: All documents relating to C.P.’s requests**  
3 **for coverage of health care services related to his gender dysphoria, including but not limited**  
4 **to BCBSIL’s claims processing of the same, its denials of coverage for certain health care**  
5 **services, including all documents reviewed or consulted by defendant in the process of**  
6 **administering C.P.’s claims, and C.P.’s administrative appeals.**

7 **RESPONSE:** BCBSIL objects to the Request as vague and ambiguous as to the undefined  
8 terms “reviewed or consulted.” BCBSIL also objects to this Request to the extent it seeks  
9 information protected by the attorney-client privilege, the work product doctrine, and/or other  
10 applicable privileges.

11 Notwithstanding these objections, BCBSIL states that it has produced responsive, non-  
12 privileged documents in its possession, custody, or control. Discovery is ongoing and BCBSIL  
13 will supplement this request if other information is discovered.

14  
15 **REQUEST FOR PRODUCTION NO. 2: All documents obtained by Defendant from**  
16 **C.P.’s medical providers related to his gender dysphoria.**

17 **RESPONSE:** BCBSIL objects that this Request seeks Documents and Communications  
18 that are already in the possession, custody, or control of Plaintiffs or that are as easily available to  
19 Plaintiffs as to BCBSIL.

20 Notwithstanding these objections, BCBSIL states that it has produced responsive, non-  
21 privileged documents in its possession, custody, or control. Discovery is ongoing and BCBSIL  
22 will supplement this request if other information is discovered.

23  
24 **REQUEST FOR PRODUCTION NO. 3: All contracts, applications, or other**  
25 **agreements between Catholic Health Initiatives and/or Catholic Health Initiatives Medical**  
26 **Plan and BCBSIL in effect as of January 1, 2014, up to and including the present.**

1            RESPONSE: BCBSIL objects to this Request as unduly burdensome and not reasonably  
2 calculated to lead to the discovery of admissible evidence in seeking “all contracts, applications,  
3 or other agreements” between Catholic Health Initiatives and/or Catholic Health Initiatives  
4 (“CHI”) Medical Plan and BCBSIL, without regard to the materiality of such documents to the  
5 facts at issue in this lawsuit. For example, this Request as drafted could encompass agreements  
6 between CHI and BCBSIL that have nothing to do with medical coverage for Plaintiffs or other  
7 beneficiaries. BCBSIL further objects to the time frame set forth in this Request as seeking  
8 irrelevant information beyond the applicable statute of limitations.

9            Notwithstanding these objections, BCBSIL states that it has produced responsive, non-  
10 privileged documents in its possession, custody, or control. Discovery is ongoing and BCBSIL  
11 will supplement this request if other information is discovered.

12  
13            **REQUEST FOR PRODUCTION NO. 4: All documents, emails, and other**  
14 **communications between Catholic Health Initiatives and/or Catholic Health Initiatives**  
15 **Medical Plan and BCBSIL relating to covering and/or excluding treatment related to gender**  
16 **dysphoria from the Plan, including but not limited to, treatment with puberty blockers such**  
17 **as Vantas Implants, testosterone treatment, and chest surgery for adolescents.**

18            RESPONSE: Notwithstanding these objections, BCBSIL states that it has produced  
19 responsive, non-privileged documents in its possession, custody, or control. Discovery is ongoing  
20 and BCBSIL will supplement this request if other information is discovered.

21  
22            **REQUEST FOR PRODUCTION NO. 5: All Independent Review Organization**  
23 **decisions related to treatment of gender dysphoria in BCBSIL plans at any time since**  
24 **January 1, 2014. Defendant may produce redacted copies of these documents.**

25            RESPONSE: BCBSIL objects to this Request as overly broad and unduly burdensome in  
26 seeking “all” Independent Review Organization decisions relating to any appeal of a denial of  
27 coverage related to treatment of gender dysphoria in any BCBSIL plan, without regard to the

1 materiality of such Documents to the facts at issue in this lawsuit. For example, this Request, as  
2 written, encompasses Documents related to any appeal of a denial of coverage for the treatment of  
3 gender dysphoria for any insured on a non-ERISA plan whose claims for coverage varied widely  
4 from those for Plaintiffs; thus, this Request is not reasonably calculated to lead to the discovery of  
5 admissible evidence. BCBSIL further objects to the time frame set forth in this Request as seeking  
6 irrelevant information beyond the applicable statute of limitations.

7 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
8 Plaintiffs regarding the relevance of this request to the allegations in the complaint. Denials based  
9 on Plan exclusions are not subject to IRO review.

10  
11 **REQUEST FOR PRODUCTION NO. 6: All documents provided to, or created by**  
12 **or for, employees or agents of BCBSIL that describe, explain, or otherwise relate to its**  
13 **administration of benefits for and/or exclusions of health care services to treat gender**  
14 **dysphoria at any time since January 1, 2014. This request includes but is not limited to:**  
15 **training manuals, policy manuals, information sheets, internal memoranda, meeting**  
16 **minutes, policy positions, committee reviews, notes, correspondence, implementation plans,**  
17 **etc. including without limitation any research, reports, analyses, studies, etc. upon which**  
18 **BCBSIL’s medical policies, and/or coverage exclusions are or were based.**

19 **RESPONSE:** BCBSIL objects to this Request as overly broad and unduly burdensome in  
20 seeking “all” Documents related to the “administration of benefits for and/or exclusions of health  
21 care services to treat gender dysphoria,” without regard to the materiality of such Documents to  
22 the facts at issue in this lawsuit. For example, this Request, as written, encompasses Documents  
23 related to plans that vary widely from the Plan at issue in this litigation; thus, this Request is not  
24 reasonably calculated to lead to the discovery of admissible evidence. BCBSIL further objects to  
25 the Request’s use of the phrase “agents of BCBSIL” as vague and ambiguous. BCBSIL further  
26  
27

1 objects to the time frame set forth in this Request as seeking irrelevant information beyond the  
2 applicable statute of limitations.

3 Notwithstanding these objections, BCBSIL is willing to meet and confer on the scope of  
4 this request.

5  
6 **REQUEST FOR PRODUCTION NO. 7: All actuarial material, or other financial**  
7 **projections, analyses, worksheets and assumption papers relating to the cost, projected or**  
8 **actual, or financial impact of providing coverage for medically necessary treatment for**  
9 **gender dysphoria for enrollees in BCBSIL ERISA self-funded group plans.**

10 RESPONSE: BCBSIL objects to this Request as overly broad and unduly burdensome in  
11 seeking “all actuarial material, or other financial projections, analyses, worksheets and assumption  
12 papers,” without regard to the materiality of such Documents to the facts at issue in this lawsuit.  
13 For example, this Request, as written, encompasses Documents related to plans that vary widely  
14 from the Plan at issue in this litigation; thus, this Request is not reasonably calculated to lead to  
15 the discovery of admissible evidence.

16 Notwithstanding the foregoing objections, BCBSIL states that it is not currently aware of  
17 any responsive information in its possession, custody, or control. Discovery is ongoing and  
18 BCBSIL will supplement this request if other information is discovered.

19  
20 **REQUEST FOR PRODUCTION NO. 8: An organizational chart for BCBSIL (and**  
21 **its subsidiaries/component entities, if applicable) for the years 2014 to the present.**

22 RESPONSE: BCBSIL objects to this Request as unduly burdensome in seeking an  
23 organizational chart showing BCBSIL’s subsidiaries and “component entities,” without regard to  
24 the materiality of each entity’s involvement with the facts at issue in this lawsuit. Thus, this  
25 Request is not reasonably calculated to lead to the discovery of admissible evidence. BCBSIL  
26 further objects to the phrase “component entities” as vague and ambiguous and undefined.  
27 BCBSIL does not have subsidiaries, affiliates or divisions. BCBSIL further objects to the time

1 frame set forth in this Request as seeking irrelevant information beyond the applicable statute of  
2 limitations.

3 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
4 Documents sufficient to show the requested information from November 23, 2016 to the present,  
5 to the degree it exists.

6  
7 **REQUEST FOR PRODUCTION NO. 9: All documents provided to, or created by**  
8 **or for, employees or agents of BCBSIL that describe, explain, or otherwise relate to coverage**  
9 **and/or the exclusion of treatment for gender dysphoria in its insured and/or self-funded or**  
10 **claims administered plans. This request includes but is not limited to: training manuals,**  
11 **policy manuals, information sheets, internal memoranda, meeting minutes, policy positions,**  
12 **committee reviews, notes, correspondence, implementation plans, etc. including without**  
13 **limitation any research, reports, analyses, studies, etc. upon which BCBSIL’s coverage**  
14 **determinations of treatment for gender dysphoria are based.**

15 **RESPONSE:** BCBSIL objects to this Request as overly broad and unduly burdensome in  
16 seeking “all” Documents “provided to, or created by or for, employees or agents of BCBSIL that  
17 describe, explain, or otherwise relate to coverage and/or the exclusion of treatment for gender  
18 dysphoria in its insured and/or self-funded or claims administered plans,” without regard to the  
19 materiality of such Documents to the facts at issue in this lawsuit. For example, this Request, as  
20 written, encompasses Documents related to plans that vary widely from the Plan at issue in this  
21 litigation; thus, this Request is not reasonably calculated to lead to the discovery of admissible  
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1 evidence. BCBSIL further objects to the phrase “agents of BCBSIL” as vague, ambiguous, and  
2 undefined. Insured Plans are not relevant to this litigation.

3 Notwithstanding these objections, BCBSIL is willing to meet and confer on the scope of  
4 this request.

5  
6 **REQUEST FOR PRODUCTION NO. 10: To the extent not already provided, please**  
7 **produce all copies of the “Benefit Program Application” submitted by the Plan and/or**  
8 **Catholic Health Initiatives to Defendant at any time since January 1, 2014.**

9 RESPONSE: BCBSIL further objects to the time frame set forth in this Request as seeking  
10 irrelevant information beyond the applicable statute of limitations.

11 Notwithstanding these objections, BCBSIL states that it has produced responsive, non-  
12 privileged documents in its possession, custody, or control. Discovery is ongoing and BCBSIL  
13 will supplement this request if other information is discovered.

14  
15 **REQUEST FOR PRODUCTION NO. 11: To the extent not already provided, please**  
16 **produce all documents provided by the Plan and/or Catholic Health Initiatives that reflects**  
17 **any determination that BCBSIL could administer the Plan in a manner that did not and/or**  
18 **does not comply with the Affordable Care Act’s Section 1557, 42 U.S.C. §18116.**

19 RESPONSE: BCBSIL objects to this Request to the extent it implicates attorney-client  
20 privilege, work-product privilege, or any other applicable privileges or protections.

21 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
22 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

23  
24 DATED this 10th day of December, 2021.

KILPATRICK TOWNSEND & STOCKTON LLP

By /s/ Gwendolyn C. Payton  
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*Counsel for Defendant Health Care Service  
Corporation, a Mutual Legal Reserve  
Company, doing business in Illinois as Blue  
Cross and Blue Shield of Illinois*

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**VERIFICATION**

1  
2 My name is Suzanne Livorsi, and I am a Project Coordinator for Blue Cross and Blue Shield  
3 Of Illinois. I have read the RESPONSES AND OBJECTIONS TO Interrogatories 1-5 of  
4 PLAINTIFFS’ FIRST DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND  
5 BLUE SHIELD OF ILLINOIS. I have authority to provide the foregoing RESPONSES AND  
6 OBJECTIONS TO Interrogatories 1-5 of PLAINTIFFS’ FIRST DISCOVERY REQUESTS TO  
7 DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS, and based on the  
8 information currently available after reasonable investigation, I certify that Blue Cross and Blue  
9 Shield Of Illinois’ RESPONSES AND OBJECTIONS TO Interrogatories 1-5 of PLAINTIFFS’  
10 FIRST DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF  
11 ILLINOIS are true, correct, and complete; except the RESPONSES AND OBJECTIONS TO  
12 Interrogatories 1-5 of PLAINTIFFS’ FIRST DISCOVERY REQUESTS TO DEFENDANT  
13 BLUE CROSS AND BLUE SHIELD OF ILLINOIS were prepared with information available  
14 from other sources and not based entirely upon my personal knowledge. The RESPONSES AND  
15 OBJECTIONS TO Interrogatories 1-5 of PLAINTIFFS’ FIRST DISCOVERY REQUESTS TO  
16 DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS are limited by the  
17 information presently recollecteD and thus far discovered in the course of preparation of the  
18 RESPONSES AND OBJECTIONS TO Interrogatories 1-5 of PLAINTIFFS’ FIRST  
19 DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF  
20 ILLINOIS.

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27  
28 I declare under penalty of perjury that the foregoing is true and correct.

Executed at Naperville, Illinois on December 10, 2021.

City

State



\_\_\_\_\_  
Suzanne Livorsi

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, RESPONSES AND OBJECTIONS TO PLAINTIFF’S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS has been sent via e-mail to the following attorneys of record:

Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
3101 WESTERN AVENUE STE 350  
SEATTLE, WA 98121  
206-223-0303  
Fax: 206-223-0246  
Email: ehamburger@sylaw.com

Jennifer C Pizer  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.  
4221 WILSHIRE BLVD., STE 280  
LOS ANGELES, CA 90010  
213-382-7600  
Email: jpizer@lambdalegal.org

Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. (NY)  
120 WALL STREET  
19TH FLOOR  
NEW YORK, NY 10005  
212-809-8585  
Email: ogonzalez-pagan@lambdalegal.org

DATED this 10th day of December, 2021.

**Kilpatrick, Townsend & Stockton LLP**

By: /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA #26752  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com)

*Counsel for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business in Illinois as Blue Cross and Blue Shield of Illinois*

## **Exhibit 3**

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

PLAINTIFF'S SECOND DISCOVERY  
REQUESTS TO DEFENDANT BLUE  
CROSS AND BLUE SHIELD OF  
ILLINOIS

**TO:** Defendant BLUE CROSS AND BLUE SHIELD OF ILLINOIS;

**AND TO:** Gwendolyn C. Payton, KILPATRICK TOWNSEND & STOCKTON LLP,  
its attorneys

Pursuant to Federal Rule of Civil Procedure 33, 34 and 36, you are requested to respond to each of the following requests for admission, interrogatories and requests for production, in accordance with the definitions and instructions set forth below.

The instructions and definitions in sections B and C, respectively, are used in and govern the requests for admission in section D, interrogatories in section E and requests for production in section F, and are incorporated by reference into those requests for admission, interrogatories and requests for production. All such requests for admission,

1 interrogatories and requests for production must be answered with regard to the  
2 following instructions and definitions.

3 **A. TIME AND PLACE OF PRODUCTION**

4 The requested material should be produced at 5:00 p.m. at the offices of Sirianni  
5 Youtz Spoonemore Hamburger within 30 days of the date of service of these requests, as  
6 required by Fed. R. Civ. P. 33 and 34.

7 **B. INSTRUCTIONS**

8 1. Unless otherwise indicated, the following requests for production and  
9 interrogatories request information and documents generally from August 10, 2012  
10 through the date that this litigation is fully and finally resolved. Information relating to  
11 events, transactions or situations occurring during such period or documents generated  
12 during same must be provided.

13 2. These requests are intended to draw upon the combined knowledge of  
14 Blue Cross and Blue Shield of Illinois and any of its agents, employees, or attorneys  
15 (collectively "Defendant" or "BCBSIL"). In responding to the requests, the Defendant  
16 must furnish all documents available to it or any of its agents, employees, or attorneys,  
17 including documents that are in the possession of the Defendant or are otherwise subject  
18 to its control.

19 3. These discovery requests are continuing in nature. In accordance with  
20 Federal Rule of Civil Procedure 26(e), if additional information is discovered at any time,  
21 these requests are directed to that information, and Defendant is requested to provide it  
22 immediately. Original documents responsive to these requests for production are to be  
23 produced for inspection at the offices of Sirianni Youtz Spoonemore Hamburger, 3101  
24 Western Avenue, Suite 350, Seattle, Washington, 30 days from the date of service of these  
25 requests.

1           4.     If it is claimed that a response, in whole or in part, to any request for  
2 production is privileged or otherwise protected from discovery, then with respect to  
3 *each* such response:

4               a.     State with specificity the reason or reasons for the objection and/or  
5 the nature of any privilege asserted;

6               b.     State the name and address of each person having knowledge of the  
7 factual basis, if any, upon which the privilege or other objection is asserted; and, if a  
8 document;

9               c.     Specify:

10                   i.     The date of the document;

11                   ii.    The nature or type of the document (*i.e.*, whether letter,  
12 telegram, memorandum, etc.);

13                   iii.   The name and address of each individual who prepared the  
14 document;

15                   iv.   The name and address of each individual to whom the  
16 document, or a copy thereof, has been at any time provided;

17                   v.    The name and address of each person from whom the  
18 document has been obtained by you;

19                   vi.   The name and address of the individual or entity having  
20 possession of the original of the document (or if the whereabouts of the original is  
21 unknown, the name and address of each person or entity known or believed to have a  
22 copy or copies thereof);

23                   vii. All other information necessary to identify the document  
24 with sufficient particularity to meet the requirements for its inclusion in a motion for  
25 production pursuant to FRCP 37; and  
26

1                   viii. If such document was, but is no longer, within your care,  
2 custody or control, state what disposition was made of it, the reason for such disposition,  
3 and the date upon which it was so disposed.

4                   **C. DEFINITIONS**

5                   As used in the following requests:

6                   1. Whenever reference is made to the “Defendant,” “you” or “your,” it is to  
7 be understood to include any and all of Blue Cross and Blue Shield of Illinois (“BCBSIL”)  
8 and its subsidiaries, predecessors in interest, directors, officers, employees, agents,  
9 attorneys (including its inside/house counsel and outside or retained counsel),  
10 accountants, consultants and other representatives.

11                   2. The term “document” means the original (or duplicate, identical copies  
12 when originals are not available), and any nonidentical copies of writings of every kind  
13 and description whether inscribed by hand or by mechanical, electronic, magnetic,  
14 microfilm, photographic or other means, as well as phonic (such as tape recordings) or  
15 visual reproductions of oral statements, conversations or events, and including but not  
16 limited to, correspondence, notes, minutes, internal messages and memoranda, reports,  
17 compilations, studies, tables and tabulations, tallies, maps, diagrams, plans, pictures,  
18 computer-generated, computer-stored or computer-readable data, electronic mail,  
19 computer printouts, teletype messages, bills of lading and other communication.  
20 “Documents” includes the file, folder tabs and/or containers and labels appended  
21 thereto associated with each such aforesaid original and copy. *With respect to electronic  
22 mail or information, these requests reach electronic information that may have been  
23 “deleted” from a person’s individual CPU, but that still exists in retrievable form on an  
24 individual’s CPU, or on the Defendant’s servers (or on any historical back-up copies of  
25 the individual’s CPU, or the servers). Such information remains in the care, custody and*

1 *control of the Defendant and must be searched and/or disclosed if responsive to these*  
2 *requests.*

3 3. The term “pertaining to” or “relating to” means concerning, referring to,  
4 alluding to, responding to, about, regarding, announcing, explaining, discussing,  
5 showing, describing, studying, reflecting and analyzing or constituting.

6 4. “Plan” means the health benefit plan provided by Catholic Health  
7 Initiatives Medical Plan for the employees of Catholic Health Initiatives (“CHI”) that is  
8 claims-administered and/or plan-administered by BCBSIL.

9 5. The term “gender-affirming care exclusion” means any exclusion,  
10 including the Transgender Reassignment Surgery exclusion contained in the CHI Plan,  
11 which categorically excludes from coverage medical services, including but not limited  
12 to gonadotropin-releasing hormone (GnRH) analog treatment, hormone replacement  
13 therapy, and surgery, for the purpose of gender transition, gender reassignment, sex  
14 change, sex reassignment, sex transformation, transsexual services, or treatment of  
15 gender dysphoria, gender identity disorder, or transsexualism, on any basis other than  
16 medical necessity.

17 **D. REQUESTS FOR ADMISSIONS**

18 REQUEST FOR ADMISSION NO. 1: Admit that there are at least 40 persons who  
19 fit the class definition found at paragraph 91 of the Amended Complaint (Dkt. No. 38).

20 ANSWER:

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23 **E. INTERROGATORIES**

24 INTERROGATORY NO. 6: Please identify any other plans for which BCBSIL  
25 administers a gender-affirming care exclusion.

26 ANSWER:

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3 INTERROGATORY NO. 7: Please identify the total population of enrollees, by  
4 year, in the CHI Plan and each of the plans identified in the responses to Interrogatories  
5 Nos. 3 and 6.

6 ANSWER:  
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9 INTERROGATORY NO. 8: Please identify the total number of unique enrollees  
10 in each plan administered by BCBSIL that contains a gender-affirming care exclusion as  
11 identified in response to Interrogatory No. 6, or an exclusion that is the same or similar  
12 to the Transgender Reassignment Surgery exclusion as identified in response to  
13 Interrogatory No. 3, who have received a denial based on such exclusion from BCBSIL  
14 at any time since November 23, 2014.

15 ANSWER:  
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18 INTERROGATORY NO. 9: For each of the plans identified in response to  
19 Interrogatories Nos. 3 and 6, please identify all individuals who participated in any way  
20 in the creation, drafting and/or preparation of the Benefit Program Application  
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1 provision on coverage of treatment for gender dysphoria and/or the gender-affirming  
2 care exclusion, whether employed by BCBSIL or another entity.

3 ANSWER:

4  
5  
6 INTERROGATORY NO. 10: To the extent that BCBSIL's response to Request for  
7 Admission No. 1 is not a complete admission, please identify the complete factual bases  
8 for BCBSIL's denial, either in whole or in part, including the source of the factual bases  
9 for the denial.

10 ANSWER:

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12  
13 **F. REQUESTS FOR PRODUCTION**

14 Please produce for inspection and copying:

15 REQUEST FOR PRODUCTION NO. 12: All contracts, Benefit Program  
16 Applications or other kinds of applications or agreements between BCBSIL and any  
17 other entity, including the self-funded plans and/or the self-funded plans' sponsors,  
18 pertaining to the plans identified in response to Interrogatories Nos. 3 and 6 in effect as  
19 of January 1, 2014, up to and including the present.

20 RESPONSE:

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22  
23 REQUEST FOR PRODUCTION NO. 13: All documents, emails, and other  
24 communications relating to covering or excluding treatment related to gender dysphoria  
25 and/or a gender-affirming care exclusion with regards to any plan identified in response  
26

1 to Interrogatories Nos. 3 and 6, including but not limited to, treatment with puberty  
2 blockers, hormone treatment, and/or surgery.

3 RESPONSE:

4  
5  
6 REQUEST FOR PRODUCTION NO. 14: To the extent not already provided,  
7 please produce all copies of the “Benefit Program Application” submitted to BCBSIL in  
8 relation to any plan identified in response to Interrogatories No. 3 and 6, at any time  
9 since January 1, 2014.

10 RESPONSE:

11  
12  
13 REQUEST FOR PRODUCTION NO. 15: To the extent not already provided,  
14 please produce all documents relating to any plan identified in response to  
15 Interrogatories Nos. 3 and 6 which reflect any determination that BCBSIL could  
16 administer such plan in a manner that did not and/or does not comply with the  
17 Affordable Care Act’s Section 1557, 42 U.S.C. § 18116.

18 RESPONSE:

1 DATED: November 9, 2021.

2 SIRIANNI YOUTZ  
3 SPOONEMORE HAMBURGER PLLC

4 /s/Eleanor Hamburger

5 Eleanor Hamburger (WSBA #26478)  
6 3101 Western Avenue, Suite 350  
7 Seattle, WA 98121  
8 Tel. (206) 223-0303; Fax (206) 223-0246  
9 Email: ehamburger@sylaw.com

10 LAMBDA LEGAL DEFENSE AND  
11 EDUCATION FUND, INC.  
12 Omar Gonzalez-Pagan, *pro hac vice*  
13 120 Wall Street, 19th Floor  
14 New York, NY 10005  
15 Tel. (212) 809-8585; Fax (212) 809-0055  
16 Email: ogonzalez-pagan@lambdalegal.org

17 Jennifer C. Pizer, *pro hac vice*  
18 4221 Wilshire Boulevard, Suite 280  
19 Los Angeles, California 90010  
20 Tel. (213) 382-7600; Fax (213) 351-6050  
21 Email: jpizer@lambdalegal.org

22 *Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2021, I caused the foregoing document to be served on the following counsel of record via electronic mail:

Gwendolyn C. Payton, WSBA No. 26752  
KILPATRICK TOWNSEND & STOCKTON LLP  
1420 Fifth Ave., Suite 3700  
Seattle, WA 98101  
Telephone: (206) 626-7714  
gpayton@kilpatricktownsend.com  
IRountree@kilpatricktownsend.com  
*Counsel for Defendant Blue Cross Blue Shield Of Illinois*

DATED: November 9, 2021, at Seattle, Washington.

/s/ Eleanor Hamburger  
Eleanor Hamburger (WSBA # 26478)  
Email: ehamburger@sylaw.com

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## **Exhibit 4**

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,  
  
Plaintiff,  
  
vs.  
  
BLUE CROSS BLUE SHIELD OF  
ILLINOIS,  
  
Defendants.

Case No. 3:20-cv-06145-RJB

**RESPONSES AND OBJECTIONS TO  
PLAINTIFF’S SECOND DISCOVERY  
REQUESTS TO DEFENDANT BLUE  
CROSS AND BLUE SHIELD OF ILLINOIS**

**TO:** Plaintiffs C. P., Patricia Pritchard, and Nolle Pritchard.

**AND TO:** SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC and LAMBDA  
LEGAL DEFENSE AND EDUCATION FUND, INC., their attorneys.

Pursuant to Federal Rules of Civil Procedure 26, 33, 34, and 36, Defendant Blue Cross  
Blue Shield of Illinois (“BCBSIL”) hereby objects and responds to Plaintiffs’ Second Discovery  
Requests (the “Requests”) as follows:

**A. GENERAL OBJECTIONS**

1. BCBSIL objects to the Requests to the extent they are overly broad, unduly  
burdensome, oppressive, redundant, vague, ambiguous, and/or seek to impose on BCBSIL  
obligations greater than or different from those imposed by the Federal Rules of Civil Procedure.

1           2.       BCBSIL objects to the Requests to the extent they impose a burden on it that is  
2 disproportionate to the needs of the litigation.

3           3.       BCBSIL interprets the Requests as excluding documents and information subject  
4 to the attorney-client privilege, work-product privilege, joint-defense/common-interest privilege,  
5 and any other applicable privileges or protections.

6           5.       BCBSIL objects to the Requests to the extent they require BCBSIL to use more  
7 than reasonable diligence in preparing their objections and responses based on an examination of  
8 those files that reasonably may be expected to yield responsive information and an inquiry of  
9 those persons who reasonably may be expected to possess responsive information.

10          6.       BCBSIL objects to the Requests to the extent the discovery sought is  
11 unreasonably cumulative, duplicative, or obtainable from some other source that is more  
12 convenient, less burdensome, or less expensive, including if the discovery sought is already in  
13 the Plaintiffs' possession.

14          7.       BCBSIL objects to each and every Request to the extent it seeks to require  
15 BCBSIL to identify or produce documents not currently in their possession, custody, or control,  
16 on the grounds that such a request seeks to require more of BCBSIL than any obligation imposed  
17 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,  
18 or would seek to impose upon it an obligation to discover information or materials from third  
19 parties or sources that are equally accessible to the Plaintiffs.

20          8.       BCBSIL objects to the Requests to the extent they seek information outside the  
21 applicable three-year statute of limitations for Plaintiffs' Section 1557 claims. *See Smith v.*  
22 *Highland Hosp. of Rochester*, No. 17-CV-6781-CJS, 2018 WL 4748187, at \*3 (W.D.N.Y. Oct.  
23 2, 2018); *Solis v. Our Lady of the Lake Ascension Cmty. Hosp., Inc.*, No. CV 18-56-SDD-RLB,  
24 2020 WL 2754917, at \*4 (M.D. La. May 27, 2020); *Ward v. Our Lady of the Lake Hosp., Inc.*,  
25 No. CV 18-00454-BAJ-RLB, 2020 WL 414457, at \*2 (M.D. La. Jan. 24, 2020); RCW  
26 4.16.080(2). Moreover, Plaintiffs' class claims, added via amended complaint, do not relate back  
27 to the filing of the initial complaint because BCBSIL was not put on sufficient notice at the time

1 that Plaintiffs intended to seek relief on a class-wide basis. *See McClelland v. Deluxe Fin. Servs.,*  
2 *Inc.*, 431 F. App’x 718, 731 (10th Cir. 2011); *Corns v. Laborers Int’l Union of N. Am.*, No. 09-  
3 CV-4403 YGR, 2014 WL 1319363, at \*5 (N.D. Cal. Mar. 31, 2014) (finding the notice  
4 requirement unmet where the original complaint did not give “clear notice” of plaintiff’s intent to  
5 allege and certify a class); *Perry v. Beneficial Finance Co. of N.Y.*, 81 F.R.D. 490, 495  
6 (W.D.N.Y. 1979) (amended complaint adding class claims did not relate back to initial  
7 individual complaint). Nonetheless, per the agreement between the parties and for discovery  
8 purposes only, BCBSIL will conduct and produce discovery from November 23, 2016 to the  
9 present.

10 9. BCBSIL objects to each and every Request to the extent BCBSIL incorporates by  
11 reference these “General Objections” into each of the Specific Responses and Objections set  
12 forth below, as if fully set forth therein.

13 10. BCBSIL incorporates by reference these “General Objections” into each of the  
14 Specific Responses and Objections set forth below, as if fully set forth therein

15 **B. OBJECTIONS TO INSTRUCTIONS**

16 1. BCBSIL objects to Instruction One because it purports to require BCBSIL to  
17 provide documents or information outside of its own possession, custody or control. BCBSIL will  
18 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
19 to it, in accordance with the Federal Rules of Civil Procedure.

20 2. BCBSIL objects to Instruction Two because it purports to require BCBSIL to  
21 provide documents or information outside of its own possession, custody or control. BCBSIL will  
22 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
23 to it, in accordance with the Federal Rules of Civil Procedure.

24 **C. OBJECTIONS TO DEFINITIONS**

25 1. BCBSIL objects to the terms “Defendant,” “you” or “your,” as overly broad and as  
26 calling for information outside of its own possession, custody, or control. BCBSIL also objects  
27

1 that these terms as defined seek information protected by the attorney-client privilege, work  
2 product doctrine, or any other applicable privilege or protection.

3 2. BCBSIL further objects that the term “Plan,” as defined, fails to identify a specific  
4 policy year. BCBSIL interprets this term to mean the Summary Plan Description, with an effective  
5 date of January 1, 2019, attached as Appendix A to the Amended Complaint (Doc. 38, the  
6 “Complaint”).

7 **D. REQUESTS FOR ADMISSION**

8 **REQUEST FOR ADMISSION NO. 1: Admit that there are at least 40 persons who**  
9 **fit the class definition found at paragraph 91 of the Amended Complaint (Dkt. No. 38).**

10 ANSWER: BCBSIL objects to this Interrogatory in that the class definition is vague,  
11 ambiguous and not easily ascertainable. BCBSIL is still investigating this request and will  
12 supplement this response upon completion of the investigation.

13  
14 **E. INTERROGATORIES**

15 **INTERROGATORY NO. 6: Please identify any other plans for which BCBSIL**  
16 **administers a gender-affirming care exclusion.**

17 ANSWER: BCBSIL objects to this Interrogatory as overly broad, unduly burdensome,  
18 and not reasonably calculated to lead to the discovery of admissible evidence in seeking “any other  
19 plans” for which BCBSIL administers a “gender-affirming care exclusion,” without regard to the  
20 materiality of such plans to the fact as issue in this lawsuit as alleged in the Complaint.

21 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
22 Documents sufficient to show the relevant language and number of ERISA self-funded group  
23 health plans pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

24  
25 **INTERROGATORY NO. 7: Please identify the total population of enrollees, by year,**  
26 **in the CHI Plan and each of the plans identified in the responses to Interrogatories Nos. 3**  
27 **and 6.**

1            ANSWER: BCBSIL incorporates by reference its responses and objections to Interrogatory  
2 Nos. 3 and 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer  
3 with Plaintiffs regarding the relevance of this request to the allegations in the complaint.

4  
5            **INTERROGATORY NO. 8**: Please identify the total number of unique enrollees in  
6 each plan administered by BCBSIL that contains a gender-affirming care exclusion as  
7 identified in response to Interrogatory No. 6, or an exclusion that is the same or similar to  
8 the Transgender Reassignment Surgery exclusion as identified in response to Interrogatory  
9 No. 3, who have received a denial based on such exclusion from BCBSIL at any time since  
10 November 23, 2014.

11            ANSWER: BCBSIL incorporates by reference its responses and objections to  
12 Interrogatory Nos. 3 and 6. BCBSIL further objects to the term “same or similar” as vague and  
13 ambiguous. BCBSIL also objects to the time frame set forth in this Interrogatory as seeking  
14 irrelevant information beyond the applicable statute of limitations. For the reasons stated above,  
15 BCBSIL will conduct and produce discovery from November 23, 2016 to the present

16            Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
17 Documents sufficient to show the requested information from November 23, 2016 to the present,  
18 to the degree it exists.

19  
20            **INTERROGATORY NO. 9**: For each of the plans identified in response to  
21 Interrogatories Nos. 3 and 6, please identify all individuals who participated in any way in  
22 the creation, drafting and/or preparation of the Benefit Program Application provision on  
23 coverage of treatment for gender dysphoria and/or the gender-affirming care exclusion,  
24 whether employed by BCBSIL or another entity.

25            ANSWER: BCBSIL incorporates by reference its responses and objections to  
26 Interrogatory Nos. 3 and 6. BCBSIL objects that the terms “creation” and “preparation” are vague  
27

1 and ambiguous. Notwithstanding the foregoing objections, BCBSIL states that it will meet and  
2 confer with Plaintiffs regarding the relevance of this request to the allegations in the complaint.

3  
4 **INTERROGATORY NO. 10:** To the extent that BCBSIL’s response to Request for  
5 Admission No. 1 is not a complete admission, please identify the complete factual bases for  
6 BCBSIL’s denial, either in whole or in part, including the source of the factual bases for the  
7 denial.

8 **ANSWER:** BCBSIL will respond if its investigation leads to a denial of Request for  
9 Admission No. 1.

10  
11 **F. REQUESTS FOR PRODUCTION**

12 **REQUEST FOR PRODUCTION NO. 12:** All contracts, Benefit Program  
13 Applications or other kinds of applications or agreements between BCBSIL and any other  
14 entity, including the self-funded plans and/or the self-funded plans’ sponsors, pertaining to  
15 the plans identified in response to Interrogatories Nos. 3 and 6 in effect as of January 1, 2014,  
16 up to and including the present.

17 **RESPONSE:** BCBSIL incorporates by reference its responses and objections to  
18 Interrogatory Nos. 3 and 6. BCBSIL objects to this Request as unduly burdensome and not  
19 reasonably calculated to lead to the discovery of admissible evidence in seeking “all contracts,  
20 Benefit Program Applications or other kinds of applications or agreements” between BCBSIL and  
21 “any other entity,” without regard to the materiality of such documents to the facts at issue in this  
22 lawsuit. For example, this Request as drafted could encompass agreements between BCBSIL and  
23 a whole number of third parties that have nothing to do with coverage for any beneficiaries.

1 BCBSIL further objects to the time frame set forth in this Request as seeking irrelevant information  
2 beyond the applicable statute of limitations.

3 BCBSIL incorporates by reference its responses and objections to Interrogatory Nos. 3 and  
4 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
5 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

6  
7 **REQUEST FOR PRODUCTION NO. 13: All documents, emails, and other**  
8 **communications relating to covering or excluding treatment related to gender dysphoria**  
9 **and/or a gender-affirming care exclusion with regards to any plan identified in response to**  
10 **Interrogatories Nos. 3 and 6, including but not limited to, treatment with puberty blockers,**  
11 **hormone treatment, and/or surgery.**

12 **RESPONSE:** BCBSIL incorporates by reference its responses and objections to  
13 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Interrogatory to the extent it seeks  
14 information protected by the attorney-client privilege, the work product doctrine, and/or other  
15 applicable privileges. BCBSIL further objects to this Request as unduly burdensome and not  
16 reasonably calculated to lead to the discovery of admissible evidence in seeking “all documents,  
17 emails, and other communications” without regard to the materiality of such documents to the facts  
18 at issue in this lawsuit. For example, this Request as drafted could encompass documents, emails,  
19 and communications related to the plans identified in response to Interrogatory Nos. 3 and 6 but  
20 which do not directly concern treatment for gender dysphoria and/or a gender-affirming care  
21 exclusion.

22 BCBSIL incorporates by reference its responses and objections to Interrogatory Nos. 3 and  
23 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
24 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

25  
26 **REQUEST FOR PRODUCTION NO. 14: To the extent not already provided, please**  
27 **produce all copies of the “Benefit Program Application” submitted to BCBSIL in relation to**

1 any plan identified in response to Interrogatories No. 3 and 6, at any time since January 1,  
2 2014.

3 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
4 Interrogatory Nos. 3 and 6. BCBSIL further objects to the time frame set forth in this Request as  
5 seeking irrelevant information beyond the applicable statute of limitations.

6 BCBSIL incorporates by reference its responses and objections to Interrogatory Nos. 3 and  
7 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
8 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

9  
10 REQUEST FOR PRODUCTION NO. 15: To the extent not already provided, please  
11 produce all documents relating to any plan identified in response to Interrogatories Nos. 3  
12 and 6 which reflect any determination that BCBSIL could administer such plan in a manner  
13 that did not and/or does not comply with the Affordable Care Act’s Section 1557, 42 U.S.C.  
14 § 18116.

15 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
16 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Request to the extent it implicates attorney-  
17 client privilege, work-product privilege, or any other applicable privileges or protections.

18 BCBSIL incorporates by reference its responses and objections to Interrogatory Nos. 3 and  
19 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
20 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

21  
22 DATED this 10th day of December, 2021.

23 KILPATRICK TOWNSEND & STOCKTON LLP

24 By /s/ Gwendolyn C. Payton  
25 Gwendolyn C. Payton, WSBA No. 26752  
26 gpayton@kilpatricktownsend.com  
27 1420 Fifth Ave., Suite 3700  
Seattle, WA 98101  
Telephone: (206) 626-7714  
Facsimile: (206) 623-6793

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*Counsel for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business in Illinois as Blue Cross and Blue Shield of Illinois*

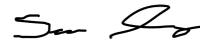
**VERIFICATION**

1  
2 My name is Suzanne Livorsi, and I am a Project Coordinator at Blue Cross and Blue  
3 Shield of Illinois. I have read the RESPONSES AND OBJECTIONS TO Interrogatories 6 -10  
4 of PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS  
5 AND BLUE SHIELD OF ILLINOIS. I have authority to provide the foregoing RESPONSES  
6 AND OBJECTIONS TO Interrogatories 6-10 of PLAINTIFFS’ SECOND DISCOVERY  
7 REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS, and  
8 based on the information currently available after reasonable investigation, I certify that Blue  
9 Cross and Blue Shield Of Illinois’ RESPONSES AND OBJECTIONS TO Interrogatories 6-10  
10 of PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS  
11 AND BLUE SHIELD OF ILLINOIS are true, correct, and complete; except that the  
12 RESPONSES AND OBJECTIONS TO Interrogatories 6 -10 of PLAINTIFFS’ SECOND  
13 DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF  
14 ILLINOIS were prepared with information available from other sources and not based entirely  
15 upon my personal knowledge. The RESPONSES AND OBJECTIONS TO Interrogatories 6 -  
16 10 of PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS  
17 AND BLUE SHIELD OF ILLINOIS are limited by the information presently recollected and  
18 thus far discovered in the course of preparation of the RESPONSES AND OBJECTIONS TO  
19 Interrogatories 6-10 of PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO  
20 DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed at Naperville, Illinois on December 10, 2021.

23 City State

24 

25 \_\_\_\_\_  
26 Suzanne Livorsi

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, RESPONSES AND OBJECTIONS TO PLAINTIFF’S SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS has been sent via e-mail to the following attorneys of record:

Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
3101 WESTERN AVENUE STE 350  
SEATTLE, WA 98121  
206-223-0303  
Fax: 206-223-0246  
Email: ehamburger@sylaw.com

Jennifer C Pizer  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.  
4221 WILSHIRE BLVD., STE 280  
LOS ANGELES, CA 90010  
213-382-7600  
Email: jpizer@lambdalegal.org

Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. (NY)  
120 WALL STREET  
19TH FLOOR  
NEW YORK, NY 10005  
212-809-8585  
Email: ogonzalez-pagan@lambdalegal.org

DATED this 10th day of December, 2021.

**Kilpatrick, Townsend & Stockton LLP**

By: /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA #26752  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com)

*Counsel for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business in Illinois as Blue Cross and Blue Shield of Illinois*

## **Exhibit 5**

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,  
  
Plaintiff,  
  
vs.  
  
BLUE CROSS BLUE SHIELD OF  
ILLINOIS,  
  
Defendants.

Case No. 3:20-cv-06145-RJB

**SUPPLEMENTAL RESPONSES AND  
OBJECTIONS TO PLAINTIFFS’ SECOND  
DISCOVERY REQUESTS TO DEFENDANT  
BLUE CROSS AND BLUE SHIELD OF  
ILLINOIS**

**TO:** Plaintiffs C. P., Patricia Pritchard, and Nolle Pritchard.

**AND TO:** SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC and LAMBDA  
LEGAL DEFENSE AND EDUCATION FUND, INC., their attorneys.

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Defendant Blue Cross Blue  
Shield of Illinois (“BCBSIL”) hereby objects and responds to Plaintiffs’ Second Discovery  
Requests (the “Requests”) as follows:

**A. GENERAL OBJECTIONS**

1. BCBSIL objects to the Requests to the extent they are overly broad, unduly  
burdensome, oppressive, redundant, vague, ambiguous, and/or seek to impose on BCBSIL  
obligations greater than or different from those imposed by the Federal Rules of Civil Procedure.

1           2.       BCBSIL objects to the Requests to the extent they impose a burden on it that is  
2 disproportionate to the needs of the litigation.

3           3.       BCBSIL interprets the Requests as excluding documents and information subject  
4 to the attorney-client privilege, work-product privilege, joint-defense/common-interest privilege,  
5 and any other applicable privileges or protections.

6           5.       BCBSIL objects to the Requests to the extent they require BCBSIL to use more  
7 than reasonable diligence in preparing their objections and responses based on an examination of  
8 those files that reasonably may be expected to yield responsive information and an inquiry of  
9 those persons who reasonably may be expected to possess responsive information.

10          6.       BCBSIL objects to the Requests to the extent the discovery sought is  
11 unreasonably cumulative, duplicative, or obtainable from some other source that is more  
12 convenient, less burdensome, or less expensive, including if the discovery sought is already in  
13 the Plaintiffs' possession.

14          7.       BCBSIL objects to each and every Request to the extent it seeks to require  
15 BCBSIL to identify or produce documents not currently in their possession, custody, or control,  
16 on the grounds that such a request seeks to require more of BCBSIL than any obligation imposed  
17 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,  
18 or would seek to impose upon it an obligation to discover information or materials from third  
19 parties or sources that are equally accessible to the Plaintiffs.

20          8.       BCBSIL objects to the Requests to the extent they seek information outside the  
21 applicable three-year statute of limitations for Plaintiffs' Section 1557 claims. *See Smith v.*  
22 *Highland Hosp. of Rochester*, No. 17-CV-6781-CJS, 2018 WL 4748187, at \*3 (W.D.N.Y. Oct.  
23 2, 2018); *Solis v. Our Lady of the Lake Ascension Cmty. Hosp., Inc.*, No. CV 18-56-SDD-RLB,  
24 2020 WL 2754917, at \*4 (M.D. La. May 27, 2020); *Ward v. Our Lady of the Lake Hosp., Inc.*,  
25 No. CV 18-00454-BAJ-RLB, 2020 WL 414457, at \*2 (M.D. La. Jan. 24, 2020); RCW  
26 4.16.080(2). Moreover, Plaintiffs' class claims, added via amended complaint, do not relate back  
27 to the filing of the initial complaint because BCBSIL was not put on sufficient notice at the time

1 that Plaintiffs intended to seek relief on a class-wide basis. *See McClelland v. Deluxe Fin. Servs.,*  
2 *Inc.*, 431 F. App'x 718, 731 (10th Cir. 2011); *Corns v. Laborers Int'l Union of N. Am.*, No. 09-  
3 CV-4403 YGR, 2014 WL 1319363, at \*5 (N.D. Cal. Mar. 31, 2014) (finding the notice  
4 requirement unmet where the original complaint did not give “clear notice” of plaintiff's intent to  
5 allege and certify a class); *Perry v. Beneficial Finance Co. of N.Y.*, 81 F.R.D. 490, 495  
6 (W.D.N.Y. 1979) (amended complaint adding class claims did not relate back to initial  
7 individual complaint). Nonetheless, per the agreement between the parties and for discovery  
8 purposes only, BCBSIL will conduct and produce discovery from November 23, 2016 to the  
9 present.

10 10. BCBSIL incorporates by reference these “General Objections” into each of the  
11 Specific Responses and Objections set forth below, as if fully set forth therein

12 **B. OBJECTIONS TO INSTRUCTIONS**

13 1. BCBSIL objects to Instruction One because it purports to require BCBSIL to  
14 provide documents or information outside of its own possession, custody or control. BCBSIL will  
15 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
16 to it, in accordance with the Federal Rules of Civil Procedure.

17 2. BCBSIL objects to Instruction Two because it purports to require BCBSIL to  
18 provide documents or information outside of its own possession, custody or control. BCBSIL will  
19 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
20 to it, in accordance with the Federal Rules of Civil Procedure.

21 **C. OBJECTIONS TO DEFINITIONS**

22 1. BCBSIL objects to the terms “Defendant,” “you” or “your,” as overly broad and as  
23 calling for information outside of its own possession, custody, or control. BCBSIL also objects  
24 that these terms as defined seek information protected by the attorney-client privilege, work  
25 product doctrine, or any other applicable privilege or protection.

26 2. BCBSIL further objects that the term “Plan,” as defined, fails to identify a specific  
27 policy year. BCBSIL interprets this term to mean the Summary Plan Description, with an effective

1 date of January 1, 2019, attached as Appendix A to the Amended Complaint (Doc. 38, the  
2 “Complaint”).

3 **D. REQUESTS FOR ADMISSION**

4 **REQUEST FOR ADMISSION NO. 1: Admit that there are at least 40 persons who  
5 fit the class definition found at paragraph 91 of the Amended Complaint (Dkt. No. 38).**

6 INITIAL ANSWER: BCBSIL objects to this Interrogatory in that the class definition is  
7 vague, ambiguous and not easily ascertainable. BCBSIL is still investigating this request and will  
8 supplement this response upon completion of the investigation.

9 SUPPLEMENTAL ANSWER: BCBSIL objects that the class definition found at  
10 Paragraph 91 of the Amended Complaint is vague, ambiguous, and not easily ascertainable.  
11 BCBSIL specifically objects that the proposed class definition hypothetically includes all  
12 individuals who “will be participants” and who “will be denied pre-authorization of coverage.”

13 Notwithstanding the foregoing objections, BCBSIL admits that there are at least 40 persons  
14 who may fit the class definition found at paragraph 91 of the Amended Complaint.

15  
16 **E. INTERROGATORIES**

17 **INTERROGATORY NO. 6: Please identify any other plans for which BCBSIL  
18 administers a gender-affirming care exclusion.**

19 ANSWER: BCBSIL objects to this Interrogatory as overly broad, unduly burdensome,  
20 and not reasonably calculated to lead to the discovery of admissible evidence in seeking “any other  
21 plans” for which BCBSIL administers a “gender-affirming care exclusion,” without regard to the  
22 materiality of such plans to the fact as issue in this lawsuit as alleged in the Complaint.

23 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
24 Documents sufficient to show the relevant language and number of ERISA self-funded group  
25  
26  
27

1 health plans pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

2  
 3 **INTERROGATORY NO. 7:** Please identify the total population of enrollees, by year,  
 4 in the CHI Plan and each of the plans identified in the responses to Interrogatories Nos. 3  
 5 and 6.

6 INITIAL ANSWER: BCBSIL incorporates by reference its responses and objections to  
 7 Interrogatory Nos. 3 and 6. Notwithstanding the foregoing objections, BCBSIL states that it will  
 8 meet and confer with Plaintiffs regarding the relevance of this request to the allegations in the  
 9 complaint.

10 SUPPLEMENTAL ANSWER: BCBSIL states that the average number of enrollees in the  
 11 CHI Medical Plan is as follows:

12	January 2016-December 2016	██████
13	January 2017-December 2017	██████
14	January 2018-December 2018	██████
15	January 2019-December 2019	██████
16	January 2020-December 2020	██████
17	January 2021-December 2021	██████

18 See BCBSIL\_CP\_0010824.

19  
 20 **INTERROGATORY NO. 8:** Please identify the total number of unique enrollees in  
 21 each plan administered by BCBSIL that contains a gender-affirming care exclusion as  
 22 identified in response to Interrogatory No. 6, or an exclusion that is the same or similar to  
 23 the Transgender Reassignment Surgery exclusion as identified in response to Interrogatory  
 24 No. 3, who have received a denial based on such exclusion from BCBSIL at any time since  
 25 November 23, 2014.

26 ANSWER: BCBSIL incorporates by reference its responses and objections to  
 27 Interrogatory Nos. 3 and 6. BCBSIL further objects to the term “same or similar” as vague and

1 ambiguous. BCBSIL also objects to the time frame set forth in this Interrogatory as seeking  
2 irrelevant information beyond the applicable statute of limitations. For the reasons stated above,  
3 BCBSIL will conduct and produce discovery from November 23, 2016 to the present

4 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
5 Documents sufficient to show the requested information from November 23, 2016 to the present,  
6 to the degree it exists.

7  
8 **INTERROGATORY NO. 9:** For each of the plans identified in response to  
9 Interrogatories Nos. 3 and 6, please identify all individuals who participated in any way in  
10 the creation, drafting and/or preparation of the Benefit Program Application provision on  
11 coverage of treatment for gender dysphoria and/or the gender-affirming care exclusion,  
12 whether employed by BCBSIL or another entity.

13 **ANSWER:** BCBSIL incorporates by reference its responses and objections to  
14 Interrogatory Nos. 3 and 6. BCBSIL objects that the terms “creation” and “preparation” are vague  
15 and ambiguous. Notwithstanding the foregoing objections, BCBSIL states that it will meet and  
16 confer with Plaintiffs regarding the relevance of this request to the allegations in the complaint.

17  
18 **INTERROGATORY NO. 10:** To the extent that BCBSIL’s response to Request for  
19 Admission No. 1 is not a complete admission, please identify the complete factual bases for  
20 BCBSIL’s denial, either in whole or in part, including the source of the factual bases for the  
21 denial.

22 **ANSWER:** BCBSIL has admitted Request for Admission No. 1.

23 **F. REQUESTS FOR PRODUCTION**

24 **REQUEST FOR PRODUCTION NO. 12:** All contracts, Benefit Program  
25 Applications or other kinds of applications or agreements between BCBSIL and any other  
26 entity, including the self-funded plans and/or the self-funded plans’ sponsors, pertaining to  
27

1 **the plans identified in response to Interrogatories Nos. 3 and 6 in effect as of January 1, 2014,**  
2 **up to and including the present.**

3 INITIAL RESPONSE: BCBSIL incorporates by reference its responses and objections to  
4 Interrogatory Nos. 3 and 6. BCBSIL objects to this Request as unduly burdensome and not  
5 reasonably calculated to lead to the discovery of admissible evidence in seeking “all contracts,  
6 Benefit Program Applications or other kinds of applications or agreements” between BCBSIL and  
7 “any other entity,” without regard to the materiality of such documents to the facts at issue in this  
8 lawsuit. For example, this Request as drafted could encompass agreements between BCBSIL and  
9 a whole number of third parties that have nothing to do with coverage for any beneficiaries.  
10 BCBSIL further objects to the time frame set forth in this Request as seeking irrelevant information  
11 beyond the applicable statute of limitations.

12 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
13 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

14 SUPPLEMENTAL RESPONSE: BCBSIL has produced its Administrative Services  
15 Agreement, *see* BCBSIL\_CP\_0003912. BCBSIL has also produced a number of responsive  
16 Benefit Program Applications from 2013-2021, *see, e.g.*, BCBSIL\_CP\_0008556;  
17 BCBSIL\_CP\_0010652; BCBSIL\_CP\_0011135; BCBSIL\_CP\_0011147; BCBSIL\_CP\_0008567;  
18 BCBSIL\_CP\_0010664; BCBSIL\_CP\_0008419; BCBSIL\_CP\_0010632; and BCBSIL\_CP\_  
19 0010621.

20  
21 **REQUEST FOR PRODUCTION NO. 13: All documents, emails, and other**  
22 **communications relating to covering or excluding treatment related to gender dysphoria**  
23 **and/or a gender-affirming care exclusion with regards to any plan identified in response to**  
24 **Interrogatories Nos. 3 and 6, including but not limited to, treatment with puberty blockers,**  
25 **hormone treatment, and/or surgery.**

26 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
27 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Interrogatory to the extent it seeks

1 information protected by the attorney-client privilege, the work product doctrine, and/or other  
2 applicable privileges. BCBSIL further objects to this Request as unduly burdensome and not  
3 reasonably calculated to lead to the discovery of admissible evidence in seeking “all documents,  
4 emails, and other communications” without regard to the materiality of such documents to the facts  
5 at issue in this lawsuit. For example, this Request as drafted could encompass documents, emails,  
6 and communications related to the plans identified in response to Interrogatory Nos. 3 and 6 but  
7 which do not directly concern treatment for gender dysphoria and/or a gender-affirming care  
8 exclusion.

9 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
10 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

11  
12 **REQUEST FOR PRODUCTION NO. 14: To the extent not already provided, please**  
13 **produce all copies of the “Benefit Program Application” submitted to BCBSIL in relation to**  
14 **any plan identified in response to Interrogatories No. 3 and 6, at any time since January 1,**  
15 **2014.**

16 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
17 Interrogatory Nos. 3 and 6. BCBSIL further objects to the time frame set forth in this Request as  
18 seeking irrelevant information beyond the applicable statute of limitations.

19 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
20 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

21  
22 **REQUEST FOR PRODUCTION NO. 15: To the extent not already provided, please**  
23 **produce all documents relating to any plan identified in response to Interrogatories Nos. 3**  
24 **and 6 which reflect any determination that BCBSIL could administer such plan in a manner**  
25 **that did not and/or does not comply with the Affordable Care Act’s Section 1557, 42 U.S.C.**  
26 **§ 18116.**



**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, SUPPLEMENTAL RESPONSES AND OBJECTIONS TO PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS has been sent via e-mail to the following attorneys of record:

Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
3101 WESTERN AVENUE STE 350  
SEATTLE, WA 98121  
206-223-0303  
Fax: 206-223-0246  
Email: ehamburger@sylaw.com

Jennifer C Pizer  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.  
4221 WILSHIRE BLVD., STE 280  
LOS ANGELES, CA 90010  
213-382-7600  
Email: jpizer@lambdalegal.org

Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. (NY)  
120 WALL STREET  
19TH FLOOR  
NEW YORK, NY 10005  
212-809-8585  
Email: ogonzalez-pagan@lambdalegal.org

DATED this 4th day of May, 2022.

**Kilpatrick, Townsend & Stockton LLP**

By: /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA #26752  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com)

*Counsel for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business in Illinois as Blue Cross and Blue Shield of Illinois*

## **Exhibit 6**

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,  
  
Plaintiff,  
  
vs.  
  
BLUE CROSS BLUE SHIELD OF  
ILLINOIS,  
  
Defendants.

Case No. 3:20-cv-06145-RJB

**SECOND SUPPLEMENTAL RESPONSES  
AND OBJECTIONS TO PLAINTIFFS’  
SECOND DISCOVERY REQUESTS TO  
DEFENDANT BLUE CROSS AND BLUE  
SHIELD OF ILLINOIS**

**TO:** Plaintiffs C. P., Patricia Pritchard, and Nolle Pritchard.

**AND TO:** SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC and LAMBDA  
LEGAL DEFENSE AND EDUCATION FUND, INC., their attorneys.

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Defendant Blue Cross Blue  
Shield of Illinois (“BCBSIL”) hereby objects and responds to Plaintiffs’ Second Discovery  
Requests (the “Requests”) as follows:

**A. GENERAL OBJECTIONS**

1. BCBSIL objects to the Requests to the extent they are overly broad, unduly  
burdensome, oppressive, redundant, vague, ambiguous, and/or seek to impose on BCBSIL  
obligations greater than or different from those imposed by the Federal Rules of Civil Procedure.

2. BCBSIL objects to the Requests to the extent they impose a burden on it that is

1 disproportionate to the needs of the litigation.

2 3. BCBSIL interprets the Requests as excluding documents and information subject  
3 to the attorney-client privilege, work-product privilege, joint-defense/common-interest privilege,  
4 and any other applicable privileges or protections.

5 5. BCBSIL objects to the Requests to the extent they require BCBSIL to use more  
6 than reasonable diligence in preparing their objections and responses based on an examination of  
7 those files that reasonably may be expected to yield responsive information and an inquiry of  
8 those persons who reasonably may be expected to possess responsive information.

9 6. BCBSIL objects to the Requests to the extent the discovery sought is  
10 unreasonably cumulative, duplicative, or obtainable from some other source that is more  
11 convenient, less burdensome, or less expensive, including if the discovery sought is already in  
12 the Plaintiffs' possession.

13 7. BCBSIL objects to each and every Request to the extent it seeks to require  
14 BCBSIL to identify or produce documents not currently in their possession, custody, or control,  
15 on the grounds that such a request seeks to require more of BCBSIL than any obligation imposed  
16 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,  
17 or would seek to impose upon it an obligation to discover information or materials from third  
18 parties or sources that are equally accessible to the Plaintiffs.

19 8. BCBSIL objects to the Requests to the extent they seek information outside the  
20 applicable three-year statute of limitations for Plaintiffs' Section 1557 claims. *See Smith v.*  
21 *Highland Hosp. of Rochester*, No. 17-CV-6781-CJS, 2018 WL 4748187, at \*3 (W.D.N.Y. Oct.  
22 2, 2018); *Solis v. Our Lady of the Lake Ascension Cmty. Hosp., Inc.*, No. CV 18-56-SDD-RLB,  
23 2020 WL 2754917, at \*4 (M.D. La. May 27, 2020); *Ward v. Our Lady of the Lake Hosp., Inc.*,  
24 No. CV 18-00454-BAJ-RLB, 2020 WL 414457, at \*2 (M.D. La. Jan. 24, 2020); RCW  
25 4.16.080(2). Moreover, Plaintiffs' class claims, added via amended complaint, do not relate back  
26 to the filing of the initial complaint because BCBSIL was not put on sufficient notice at the time  
27 that Plaintiffs intended to seek relief on a class-wide basis. *See McClelland v. Deluxe Fin. Servs.*,

1 *Inc.*, 431 F. App'x 718, 731 (10th Cir. 2011); *Corns v. Laborers Int'l Union of N. Am.*, No. 09-  
2 CV-4403 YGR, 2014 WL 1319363, at \*5 (N.D. Cal. Mar. 31, 2014) (finding the notice  
3 requirement unmet where the original complaint did not give "clear notice" of plaintiff's intent to  
4 allege and certify a class); *Perry v. Beneficial Finance Co. of N.Y.*, 81 F.R.D. 490, 495  
5 (W.D.N.Y. 1979) (amended complaint adding class claims did not relate back to initial  
6 individual complaint). Nonetheless, per the agreement between the parties and for discovery  
7 purposes only, BCBSIL will conduct and produce discovery from November 23, 2016 to the  
8 present.

9 10. BCBSIL incorporates by reference these "General Objections" into each of the  
10 Specific Responses and Objections set forth below, as if fully set forth therein

### 11 **B. OBJECTIONS TO INSTRUCTIONS**

12 1. BCBSIL objects to Instruction One because it purports to require BCBSIL to  
13 provide documents or information outside of its own possession, custody or control. BCBSIL will  
14 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
15 to it, in accordance with the Federal Rules of Civil Procedure.

16 2. BCBSIL objects to Instruction Two because it purports to require BCBSIL to  
17 provide documents or information outside of its own possession, custody or control. BCBSIL will  
18 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
19 to it, in accordance with the Federal Rules of Civil Procedure.

### 20 **C. OBJECTIONS TO DEFINITIONS**

21 1. BCBSIL objects to the terms "Defendant," "you" or "your," as overly broad and as  
22 calling for information outside of its own possession, custody, or control. BCBSIL also objects  
23 that these terms as defined seek information protected by the attorney-client privilege, work  
24 product doctrine, or any other applicable privilege or protection.

25 2. BCBSIL further objects that the term "Plan," as defined, fails to identify a specific  
26 policy year. BCBSIL interprets this term to mean the Summary Plan Description, with an effective  
27

1 date of January 1, 2019, attached as Appendix A to the Amended Complaint (Doc. 38, the  
2 “Complaint”).

3 **D. REQUESTS FOR ADMISSION**

4 **REQUEST FOR ADMISSION NO. 1: Admit that there are at least 40 persons who  
5 fit the class definition found at paragraph 91 of the Amended Complaint (Dkt. No. 38).**

6 INITIAL ANSWER: BCBSIL objects to this Interrogatory in that the class definition is  
7 vague, ambiguous and not easily ascertainable. BCBSIL is still investigating this request and will  
8 supplement this response upon completion of the investigation.

9 SUPPLEMENTAL ANSWER: BCBSIL objects that the class definition found at  
10 Paragraph 91 of the Amended Complaint is vague, ambiguous, and not easily ascertainable.  
11 BCBSIL specifically objects that the proposed class definition hypothetically includes all  
12 individuals who “will be participants” and who “will be denied pre-authorization of coverage.”

13 Notwithstanding the foregoing objections, BCBSIL admits that there are at least 40 persons  
14 who may fit the class definition found at paragraph 91 of the Amended Complaint.

15  
16 **E. INTERROGATORIES**

17 **INTERROGATORY NO. 6: Please identify any other plans for which BCBSIL  
18 administers a gender-affirming care exclusion.**

19 INITIAL ANSWER: BCBSIL objects to this Interrogatory as overly broad, unduly  
20 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in  
21 seeking “any other plans” for which BCBSIL administers a “gender-affirming care exclusion,”  
22 without regard to the materiality of such plans to the fact as issue in this lawsuit as alleged in the  
23 Complaint.

24 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
25 Documents sufficient to show the relevant language and number of ERISA self-funded group  
26 health plans pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

27 SUPPLEMENTAL ANSWER: BCBSIL objects to this Interrogatory as overly broad,

1 unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence  
 2 in seeking “any other plans” for which BCBSIL administers a “gender-affirming care exclusion,”  
 3 without regard to the materiality of such plans to the fact as issue in this lawsuit as alleged in the  
 4 Complaint.

5 Notwithstanding the foregoing objections, BCBSIL preliminarily states that there are at  
 6 least [REDACTED] ERISA self-funded group health plans for which BCBSIL administers a gender-affirming  
 7 care exclusion. Discovery is ongoing, and BCBSIL reasonably anticipates that this number will  
 8 increase. BCBSIL will supplement this preliminary number as its internal review and investigation  
 9 proceeds.

10  
 11 **INTERROGATORY NO. 7: Please identify the total population of enrollees, by year,**  
 12 **in the CHI Plan and each of the plans identified in the responses to Interrogatories Nos. 3**  
 13 **and 6.**

14 INITIAL ANSWER: BCBSIL incorporates by reference its responses and objections to  
 15 Interrogatory Nos. 3 and 6. Notwithstanding the foregoing objections, BCBSIL states that it will  
 16 meet and confer with Plaintiffs regarding the relevance of this request to the allegations in the  
 17 complaint.

18 SUPPLEMENTAL ANSWER: BCBSIL states that the average number of enrollees in the  
 19 CHI Medical Plan is as follows:

20	January 2016-December 2016	[REDACTED]
21	January 2017-December 2017	[REDACTED]
22	January 2018-December 2018	[REDACTED]
23	January 2019-December 2019	[REDACTED]
24	January 2020-December 2020	[REDACTED]
25	January 2021-December 2021	[REDACTED]

26 See BCBSIL\_CP\_0010824.

1  
2       **INTERROGATORY NO. 8:** Please identify the total number of unique enrollees in  
3 each plan administered by BCBSIL that contains a gender-affirming care exclusion as  
4 identified in response to Interrogatory No. 6, or an exclusion that is the same or similar to  
5 the Transgender Reassignment Surgery exclusion as identified in response to Interrogatory  
6 No. 3, who have received a denial based on such exclusion from BCBSIL at any time since  
7 November 23, 2014.

8       **INITIAL ANSWER:** BCBSIL incorporates by reference its responses and objections to  
9 Interrogatory Nos. 3 and 6. BCBSIL further objects to the term “same or similar” as vague and  
10 ambiguous. BCBSIL also objects to the time frame set forth in this Interrogatory as seeking  
11 irrelevant information beyond the applicable statute of limitations. For the reasons stated above,  
12 BCBSIL will conduct and produce discovery from November 23, 2016 to the present.

13       Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
14 Documents sufficient to show the requested information from November 23, 2016 to the present,  
15 to the degree it exists.

16       **SUPPLEMENTAL ANSWER:** BCBSIL incorporates by reference its responses and  
17 objections to Interrogatory Nos. 3 and 6. BCBSIL further objects to the term “same or similar” as  
18 vague and ambiguous. BCBSIL also objects to the time frame set forth in this Interrogatory as  
19 seeking irrelevant information beyond the applicable statute of limitations. For the reasons stated  
20 above, BCBSIL will conduct and produce discovery from November 23, 2016 to the present.

21       Notwithstanding the foregoing objections, BCBSIL preliminarily states that of the ERISA  
22 self-funded group health plans BCBSIL administers, there are approximately [REDACTED] unique members  
23 of [REDACTED] plans who have received a denial based on such an exclusion, for a total claim count of  
24 [REDACTED] claims and a total billed charges amount of [REDACTED]. BCBSIL reasonably anticipates

1 that these numbers are overinclusive. Discovery is ongoing, and BCBSIL will supplement these  
2 preliminary numbers as its internal review and investigation proceeds.

3  
4 **INTERROGATORY NO. 9:** For each of the plans identified in response to  
5 Interrogatories Nos. 3 and 6, please identify all individuals who participated in any way in  
6 the creation, drafting and/or preparation of the Benefit Program Application provision on  
7 coverage of treatment for gender dysphoria and/or the gender-affirming care exclusion,  
8 whether employed by BCBSIL or another entity.

9 **ANSWER:** BCBSIL incorporates by reference its responses and objections to  
10 Interrogatory Nos. 3 and 6. BCBSIL objects that the terms “creation” and “preparation” are vague  
11 and ambiguous. Notwithstanding the foregoing objections, BCBSIL states that it will meet and  
12 confer with Plaintiffs regarding the relevance of this request to the allegations in the complaint.

13  
14 **INTERROGATORY NO. 10:** To the extent that BCBSIL’s response to Request for  
15 Admission No. 1 is not a complete admission, please identify the complete factual bases for  
16 BCBSIL’s denial, either in whole or in part, including the source of the factual bases for the  
17 denial.

18 **ANSWER:** BCBSIL has admitted Request for Admission No. 1.

19 **F. REQUESTS FOR PRODUCTION**

20 **REQUEST FOR PRODUCTION NO. 12:** All contracts, Benefit Program  
21 Applications or other kinds of applications or agreements between BCBSIL and any other  
22 entity, including the self-funded plans and/or the self-funded plans’ sponsors, pertaining to  
23 the plans identified in response to Interrogatories Nos. 3 and 6 in effect as of January 1, 2014,  
24 up to and including the present.

25 **INITIAL RESPONSE:** BCBSIL incorporates by reference its responses and objections to  
26 Interrogatory Nos. 3 and 6. BCBSIL objects to this Request as unduly burdensome and not  
27 reasonably calculated to lead to the discovery of admissible evidence in seeking “all contracts,

1 Benefit Program Applications or other kinds of applications or agreements” between BCBSIL and  
2 “any other entity,” without regard to the materiality of such documents to the facts at issue in this  
3 lawsuit. For example, this Request as drafted could encompass agreements between BCBSIL and  
4 a whole number of third parties that have nothing to do with coverage for any beneficiaries.  
5 BCBSIL further objects to the time frame set forth in this Request as seeking irrelevant information  
6 beyond the applicable statute of limitations.

7 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
8 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

9 SUPPLEMENTAL RESPONSE: BCBSIL has produced its Administrative Services  
10 Agreement, *see* BCBSIL\_CP\_0003912. BCBSIL has also produced a number of responsive  
11 Benefit Program Applications from 2013-2021, *see, e.g.*, BCBSIL\_CP\_0008556;  
12 BCBSIL\_CP\_0010652; BCBSIL\_CP\_0011135; BCBSIL\_CP\_0011147; BCBSIL\_CP\_0008567;  
13 BCBSIL\_CP\_0010664; BCBSIL\_CP\_0008419; BCBSIL\_CP\_0010632; and BCBSIL\_CP\_  
14 0010621.

15  
16 **REQUEST FOR PRODUCTION NO. 13: All documents, emails, and other**  
17 **communications relating to covering or excluding treatment related to gender dysphoria**  
18 **and/or a gender-affirming care exclusion with regards to any plan identified in response to**  
19 **Interrogatories Nos. 3 and 6, including but not limited to, treatment with puberty blockers,**  
20 **hormone treatment, and/or surgery.**

21 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
22 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Interrogatory to the extent it seeks  
23 information protected by the attorney-client privilege, the work product doctrine, and/or other  
24 applicable privileges. BCBSIL further objects to this Request as unduly burdensome and not  
25 reasonably calculated to lead to the discovery of admissible evidence in seeking “all documents,  
26 emails, and other communications” without regard to the materiality of such documents to the facts  
27 at issue in this lawsuit. For example, this Request as drafted could encompass documents, emails,

1 and communications related to the plans identified in response to Interrogatory Nos. 3 and 6 but  
2 which do not directly concern treatment for gender dysphoria and/or a gender-affirming care  
3 exclusion.

4 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
5 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

6  
7 **REQUEST FOR PRODUCTION NO. 14: To the extent not already provided, please**  
8 **produce all copies of the “Benefit Program Application” submitted to BCBSIL in relation to**  
9 **any plan identified in response to Interrogatories No. 3 and 6, at any time since January 1,**  
10 **2014.**

11 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
12 Interrogatory Nos. 3 and 6. BCBSIL further objects to the time frame set forth in this Request as  
13 seeking irrelevant information beyond the applicable statute of limitations.

14 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
15 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

16  
17 **REQUEST FOR PRODUCTION NO. 15: To the extent not already provided, please**  
18 **produce all documents relating to any plan identified in response to Interrogatories Nos. 3**  
19 **and 6 which reflect any determination that BCBSIL could administer such plan in a manner**  
20 **that did not and/or does not comply with the Affordable Care Act’s Section 1557, 42 U.S.C.**  
21 **§ 18116.**

22 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
23 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Request to the extent it implicates attorney-  
24 client privilege, work-product privilege, or any other applicable privileges or protections.

25 BCBSIL incorporates by reference its responses and objections to Interrogatory Nos. 3 and  
26 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
27 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

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DATED this 9<sup>th</sup> day of May, 2022.

KILPATRICK TOWNSEND & STOCKTON LLP

By /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA No. 26752  
gpayton@kilpatricktownsend.com  
1420 Fifth Ave., Suite 3700  
Seattle, WA 98101  
Telephone: (206) 626-7714  
Facsimile: (206) 623-6793

*Counsel for Defendant Health Care Service  
Corporation, a Mutual Legal Reserve  
Company, doing business in Illinois as Blue  
Cross and Blue Shield of Illinois*

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS has been sent via e-mail to the following attorneys of record:

Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
3101 WESTERN AVENUE STE 350  
SEATTLE, WA 98121  
206-223-0303  
Fax: 206-223-0246  
Email: ehamburger@syllaw.com

Jennifer C Pizer  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.  
4221 WILSHIRE BLVD., STE 280  
LOS ANGELES, CA 90010  
213-382-7600  
Email: jpizer@lambdalegal.org

Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. (NY)  
120 WALL STREET  
19TH FLOOR  
NEW YORK, NY 10005  
212-809-8585  
Email: ogonzalez-pagan@lambdalegal.org

DATED this 9<sup>th</sup> day of May, 2022.

**Kilpatrick, Townsend & Stockton LLP**

By: /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA #26752  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com)

*Counsel for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business in Illinois as Blue Cross and Blue Shield of Illinois*

## **Exhibit 7**

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,  
  
Plaintiff,  
  
vs.  
  
BLUE CROSS BLUE SHIELD OF  
ILLINOIS,  
  
Defendants.

Case No. 3:20-cv-06145-RJB

**THIRD SUPPLEMENTAL RESPONSES  
AND OBJECTIONS TO PLAINTIFFS’  
SECOND DISCOVERY REQUESTS TO  
DEFENDANT BLUE CROSS AND BLUE  
SHIELD OF ILLINOIS**

**TO:** Plaintiffs C. P., Patricia Pritchard, and Nolle Pritchard.

**AND TO:** SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC and LAMBDA  
LEGAL DEFENSE AND EDUCATION FUND, INC., their attorneys.

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Defendant Blue Cross Blue  
Shield of Illinois (“BCBSIL”) hereby objects and responds to Plaintiffs’ Second Discovery  
Requests (the “Requests”) as follows:

**A. GENERAL OBJECTIONS**

1. BCBSIL objects to the Requests to the extent they are overly broad, unduly  
burdensome, oppressive, redundant, vague, ambiguous, and/or seek to impose on BCBSIL  
obligations greater than or different from those imposed by the Federal Rules of Civil Procedure.

2. BCBSIL objects to the Requests to the extent they impose a burden on it that is

1 disproportionate to the needs of the litigation.

2 3. BCBSIL interprets the Requests as excluding documents and information subject  
3 to the attorney-client privilege, work-product privilege, joint-defense/common-interest privilege,  
4 and any other applicable privileges or protections.

5 5. BCBSIL objects to the Requests to the extent they require BCBSIL to use more  
6 than reasonable diligence in preparing their objections and responses based on an examination of  
7 those files that reasonably may be expected to yield responsive information and an inquiry of  
8 those persons who reasonably may be expected to possess responsive information.

9 6. BCBSIL objects to the Requests to the extent the discovery sought is  
10 unreasonably cumulative, duplicative, or obtainable from some other source that is more  
11 convenient, less burdensome, or less expensive, including if the discovery sought is already in  
12 the Plaintiffs' possession.

13 7. BCBSIL objects to each and every Request to the extent it seeks to require  
14 BCBSIL to identify or produce documents not currently in their possession, custody, or control,  
15 on the grounds that such a request seeks to require more of BCBSIL than any obligation imposed  
16 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,  
17 or would seek to impose upon it an obligation to discover information or materials from third  
18 parties or sources that are equally accessible to the Plaintiffs.

19 8. BCBSIL objects to the Requests to the extent they seek information outside the  
20 applicable three-year statute of limitations for Plaintiffs' Section 1557 claims. *See Smith v.*  
21 *Highland Hosp. of Rochester*, No. 17-CV-6781-CJS, 2018 WL 4748187, at \*3 (W.D.N.Y. Oct.  
22 2, 2018); *Solis v. Our Lady of the Lake Ascension Cmty. Hosp., Inc.*, No. CV 18-56-SDD-RLB,  
23 2020 WL 2754917, at \*4 (M.D. La. May 27, 2020); *Ward v. Our Lady of the Lake Hosp., Inc.*,  
24 No. CV 18-00454-BAJ-RLB, 2020 WL 414457, at \*2 (M.D. La. Jan. 24, 2020); RCW  
25 4.16.080(2). Moreover, Plaintiffs' class claims, added via amended complaint, do not relate back  
26 to the filing of the initial complaint because BCBSIL was not put on sufficient notice at the time  
27 that Plaintiffs intended to seek relief on a class-wide basis. *See McClelland v. Deluxe Fin. Servs.*,

1 *Inc.*, 431 F. App'x 718, 731 (10th Cir. 2011); *Corns v. Laborers Int'l Union of N. Am.*, No. 09-  
2 CV-4403 YGR, 2014 WL 1319363, at \*5 (N.D. Cal. Mar. 31, 2014) (finding the notice  
3 requirement unmet where the original complaint did not give "clear notice" of plaintiff's intent to  
4 allege and certify a class); *Perry v. Beneficial Finance Co. of N.Y.*, 81 F.R.D. 490, 495  
5 (W.D.N.Y. 1979) (amended complaint adding class claims did not relate back to initial  
6 individual complaint). Nonetheless, per the agreement between the parties and for discovery  
7 purposes only, BCBSIL will conduct and produce discovery from November 23, 2016 to the  
8 present.

9 10. BCBSIL incorporates by reference these "General Objections" into each of the  
10 Specific Responses and Objections set forth below, as if fully set forth therein

### 11 **B. OBJECTIONS TO INSTRUCTIONS**

12 1. BCBSIL objects to Instruction One because it purports to require BCBSIL to  
13 provide documents or information outside of its own possession, custody or control. BCBSIL will  
14 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
15 to it, in accordance with the Federal Rules of Civil Procedure.

16 2. BCBSIL objects to Instruction Two because it purports to require BCBSIL to  
17 provide documents or information outside of its own possession, custody or control. BCBSIL will  
18 interpret these Requests to require BCBSIL to draw upon the information reasonably ascertainable  
19 to it, in accordance with the Federal Rules of Civil Procedure.

### 20 **C. OBJECTIONS TO DEFINITIONS**

21 1. BCBSIL objects to the terms "Defendant," "you" or "your," as overly broad and as  
22 calling for information outside of its own possession, custody, or control. BCBSIL also objects  
23 that these terms as defined seek information protected by the attorney-client privilege, work  
24 product doctrine, or any other applicable privilege or protection.

25 2. BCBSIL further objects that the term "Plan," as defined, fails to identify a specific  
26 policy year. BCBSIL interprets this term to mean the Summary Plan Description, with an effective  
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1 date of January 1, 2019, attached as Appendix A to the Amended Complaint (Doc. 38, the  
2 “Complaint”).

3 **D. REQUESTS FOR ADMISSION**

4 **REQUEST FOR ADMISSION NO. 1: Admit that there are at least 40 persons who  
5 fit the class definition found at paragraph 91 of the Amended Complaint (Dkt. No. 38).**

6 INITIAL ANSWER: BCBSIL objects to this Interrogatory in that the class definition is  
7 vague, ambiguous and not easily ascertainable. BCBSIL is still investigating this request and will  
8 supplement this response upon completion of the investigation.

9 SUPPLEMENTAL ANSWER: BCBSIL objects that the class definition found at  
10 Paragraph 91 of the Amended Complaint is vague, ambiguous, and not easily ascertainable.  
11 BCBSIL specifically objects that the proposed class definition hypothetically includes all  
12 individuals who “will be participants” and who “will be denied pre-authorization of coverage.”

13 Notwithstanding the foregoing objections, BCBSIL admits that there are at least 40 persons  
14 who may fit the class definition found at paragraph 91 of the Amended Complaint.

15  
16 **E. INTERROGATORIES**

17 **INTERROGATORY NO. 6: Please identify any other plans for which BCBSIL  
18 administers a gender-affirming care exclusion.**

19 INITIAL ANSWER: BCBSIL objects to this Interrogatory as overly broad, unduly  
20 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in  
21 seeking “any other plans” for which BCBSIL administers a “gender-affirming care exclusion,”  
22 without regard to the materiality of such plans to the fact as issue in this lawsuit as alleged in the  
23 Complaint.

24 Notwithstanding the foregoing objections, BCBSIL states that it will produce responsive  
25 Documents sufficient to show the relevant language and number of ERISA self-funded group  
26 health plans pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

27 SUPPLEMENTAL ANSWER: BCBSIL objects to this Interrogatory as overly broad,

1 unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence  
 2 in seeking “any other plans” for which BCBSIL administers a “gender-affirming care exclusion,”  
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5 Notwithstanding the foregoing objections, BCBSIL preliminarily states that there are at  
 6 least [REDACTED] ERISA self-funded group health plans for which BCBSIL administers a gender-affirming  
 7 care exclusion. Discovery is ongoing, and BCBSIL reasonably anticipates that this number will  
 8 increase. BCBSIL will supplement this preliminary number as its internal review and investigation  
 9 proceeds.

10 SECOND SUPPLEMENTAL ANSWER: See Addendum A.

11  
 12 **INTERROGATORY NO. 7: Please identify the total population of enrollees, by year,**  
 13 **in the CHI Plan and each of the plans identified in the responses to Interrogatories Nos. 3**  
 14 **and 6.**

15 INITIAL ANSWER: BCBSIL incorporates by reference its responses and objections to  
 16 Interrogatory Nos. 3 and 6. Notwithstanding the foregoing objections, BCBSIL states that it will  
 17 meet and confer with Plaintiffs regarding the relevance of this request to the allegations in the  
 18 complaint.

19 SUPPLEMENTAL ANSWER: BCBSIL states that the average number of enrollees in the  
 20 CHI Medical Plan is as follows:

21	January 2016-December 2016	[REDACTED]
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25	January 2020-December 2020	[REDACTED]
26	January 2021-December 2021	[REDACTED]

27 See BCBSIL\_CP\_0010824.

1  
2       **INTERROGATORY NO. 8:** Please identify the total number of unique enrollees in  
3 each plan administered by BCBSIL that contains a gender-affirming care exclusion as  
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5 the Transgender Reassignment Surgery exclusion as identified in response to Interrogatory  
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7 November 23, 2014.

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15 Admission No. 1 is not a complete admission, please identify the complete factual bases for  
16 BCBSIL’s denial, either in whole or in part, including the source of the factual bases for the  
17 denial.

18 **ANSWER:** BCBSIL has admitted Request for Admission No. 1.

19 **F. REQUESTS FOR PRODUCTION**

20 **REQUEST FOR PRODUCTION NO. 12:** All contracts, Benefit Program  
21 Applications or other kinds of applications or agreements between BCBSIL and any other  
22 entity, including the self-funded plans and/or the self-funded plans’ sponsors, pertaining to  
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25 **INITIAL RESPONSE:** BCBSIL incorporates by reference its responses and objections to  
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11 Benefit Program Applications from 2013-2021, *see, e.g.*, BCBSIL\_CP\_0008556;  
12 BCBSIL\_CP\_0010652; BCBSIL\_CP\_0011135; BCBSIL\_CP\_0011147; BCBSIL\_CP\_0008567;  
13 BCBSIL\_CP\_0010664; BCBSIL\_CP\_0008419; BCBSIL\_CP\_0010632; and BCBSIL\_CP\_  
14 0010621.

15  
16 **REQUEST FOR PRODUCTION NO. 13: All documents, emails, and other**  
17 **communications relating to covering or excluding treatment related to gender dysphoria**  
18 **and/or a gender-affirming care exclusion with regards to any plan identified in response to**  
19 **Interrogatories Nos. 3 and 6, including but not limited to, treatment with puberty blockers,**  
20 **hormone treatment, and/or surgery.**

21 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
22 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Interrogatory to the extent it seeks  
23 information protected by the attorney-client privilege, the work product doctrine, and/or other  
24 applicable privileges. BCBSIL further objects to this Request as unduly burdensome and not  
25 reasonably calculated to lead to the discovery of admissible evidence in seeking “all documents,  
26 emails, and other communications” without regard to the materiality of such documents to the facts  
27 at issue in this lawsuit. For example, this Request as drafted could encompass documents, emails,

1 and communications related to the plans identified in response to Interrogatory Nos. 3 and 6 but  
2 which do not directly concern treatment for gender dysphoria and/or a gender-affirming care  
3 exclusion.

4 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
5 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

6  
7 **REQUEST FOR PRODUCTION NO. 14: To the extent not already provided, please**  
8 **produce all copies of the “Benefit Program Application” submitted to BCBSIL in relation to**  
9 **any plan identified in response to Interrogatories No. 3 and 6, at any time since January 1,**  
10 **2014.**

11 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
12 Interrogatory Nos. 3 and 6. BCBSIL further objects to the time frame set forth in this Request as  
13 seeking irrelevant information beyond the applicable statute of limitations.

14 Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
15 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

16  
17 **REQUEST FOR PRODUCTION NO. 15: To the extent not already provided, please**  
18 **produce all documents relating to any plan identified in response to Interrogatories Nos. 3**  
19 **and 6 which reflect any determination that BCBSIL could administer such plan in a manner**  
20 **that did not and/or does not comply with the Affordable Care Act’s Section 1557, 42 U.S.C.**  
21 **§ 18116.**

22 RESPONSE: BCBSIL incorporates by reference its responses and objections to  
23 Interrogatory Nos. 3 and 6. BCBSIL also objects to this Request to the extent it implicates attorney-  
24 client privilege, work-product privilege, or any other applicable privileges or protections.

25 BCBSIL incorporates by reference its responses and objections to Interrogatory Nos. 3 and  
26 6. Notwithstanding the foregoing objections, BCBSIL states that it will meet and confer with  
27 Plaintiffs regarding the relevance of this request to the allegations in the complaint.

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DATED this 12th day of May, 2022.

KILPATRICK TOWNSEND & STOCKTON LLP

By /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA No. 26752  
gpayton@kilpatricktownsend.com  
1420 Fifth Ave., Suite 3700  
Seattle, WA 98101  
Telephone: (206) 626-7714  
Facsimile: (206) 623-6793

*Counsel for Defendant Health Care Service  
Corporation, a Mutual Legal Reserve  
Company, doing business in Illinois as Blue  
Cross and Blue Shield of Illinois*

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, THIRD SUPPLEMENTAL RESPONSES AND OBJECTIONS TO PLAINTIFFS’ SECOND DISCOVERY REQUESTS TO DEFENDANT BLUE CROSS AND BLUE SHIELD OF ILLINOIS has been sent via e-mail to the following attorneys of record:

Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
3101 WESTERN AVENUE STE 350  
SEATTLE, WA 98121  
206-223-0303  
Fax: 206-223-0246  
Email: ehamburger@sylaw.com

Jennifer C Pizer  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.  
4221 WILSHIRE BLVD., STE 280  
LOS ANGELES, CA 90010  
213-382-7600  
Email: jpizer@lambdalegal.org

Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. (NY)  
120 WALL STREET  
19TH FLOOR  
NEW YORK, NY 10005  
212-809-8585  
Email: ogonzalez-pagan@lambdalegal.org

DATED this 12th day of May, 2022.

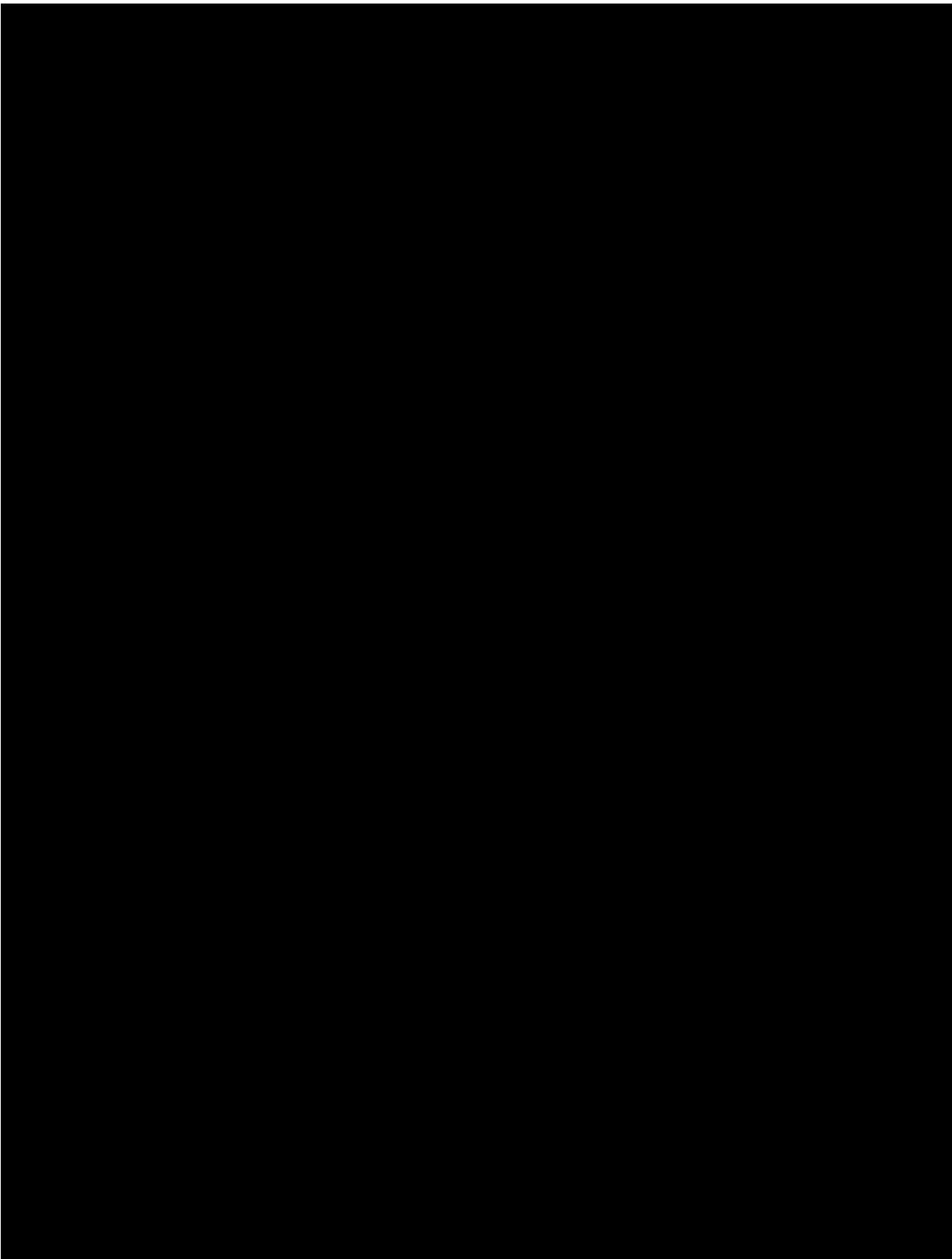
**Kilpatrick, Townsend & Stockton LLP**

By: /s/ Gwendolyn C. Payton  
Gwendolyn C. Payton, WSBA #26752  
gpayton@kilpatricktownsend.com

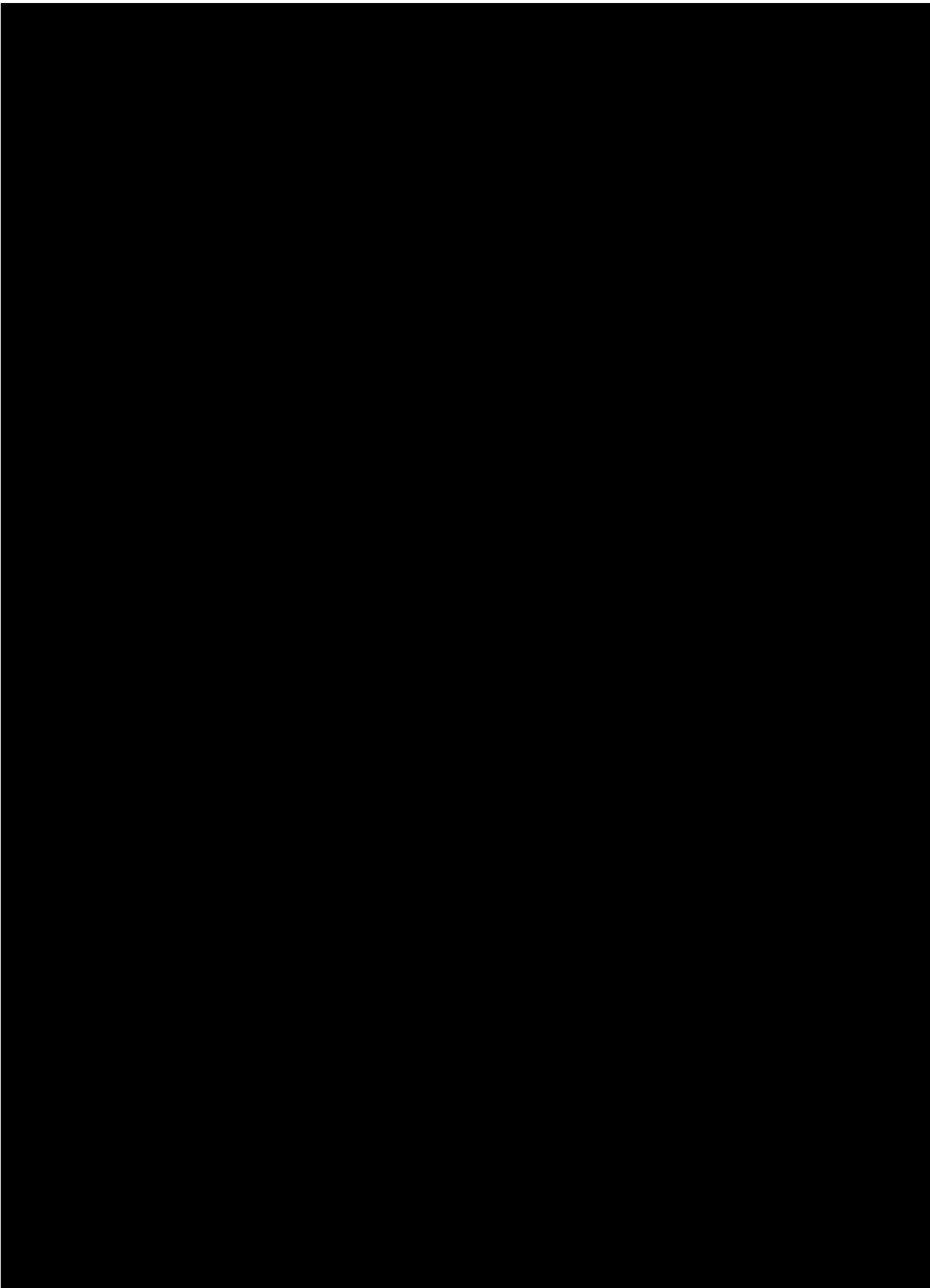
*Counsel for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business in Illinois as Blue Cross and Blue Shield of Illinois*

**ADDENDUM A**

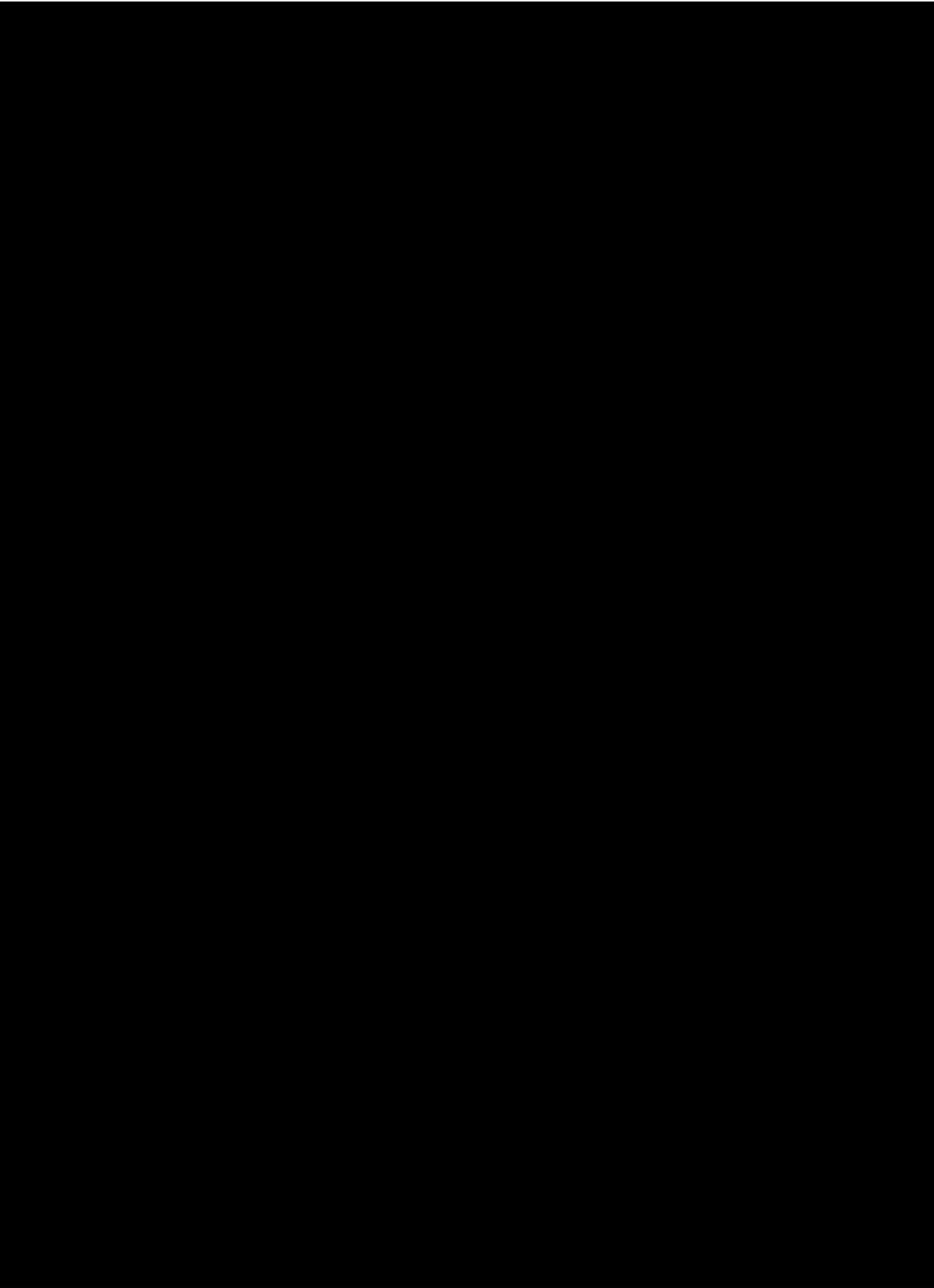
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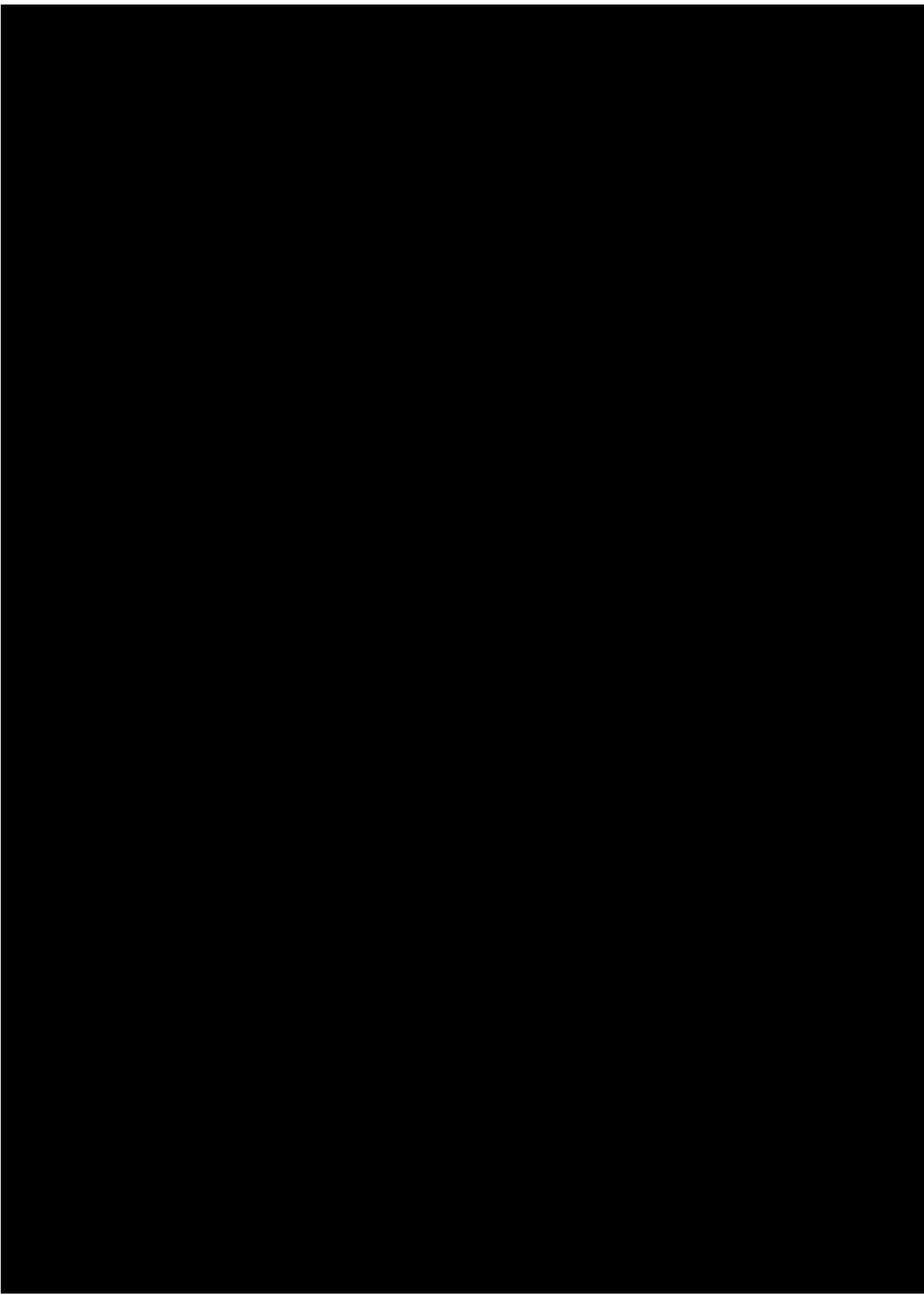
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## **Exhibit 8**

**From:** [Ele Hamburger](#)  
**To:** [Payton Gwendolyn](#)  
**Cc:** [Bedard Stephanie](#); [Omar Gonzalez-Pagan](#); [Jenny Pizer](#); [Daniel Gross](#)  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12  
**Date:** Wednesday, May 11, 2022 1:14:00 PM

---

Gwendolyn,

Are you refusing to meet and confer about this at 3:30 today? What is the legal basis for defendants' belated refusal to produce the actual SPDs or the identity of the employer pursuant to the existing protective order in response to properly served discovery, many months ago?

Ele

---

**From:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Sent:** Wednesday, May 11, 2022 1:10 PM  
**To:** Ele Hamburger <[ele@syllaw.com](mailto:ele@syllaw.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

Ele, Thanks for your email. 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. We are not contesting that we administer plans with exclusions. We understand that you do not have a monetary damages claim other than for CP, and only seek injunctive relief with respect to other employers.

Thanks,

Gwendolyn

**Gwendolyn Payton**  
Kilpatrick Townsend & Stockton LLP  
Suite 3700 | 1420 Fifth Avenue | Seattle, WA 98101  
office 206 626 7714 | fax 206 299 0414  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

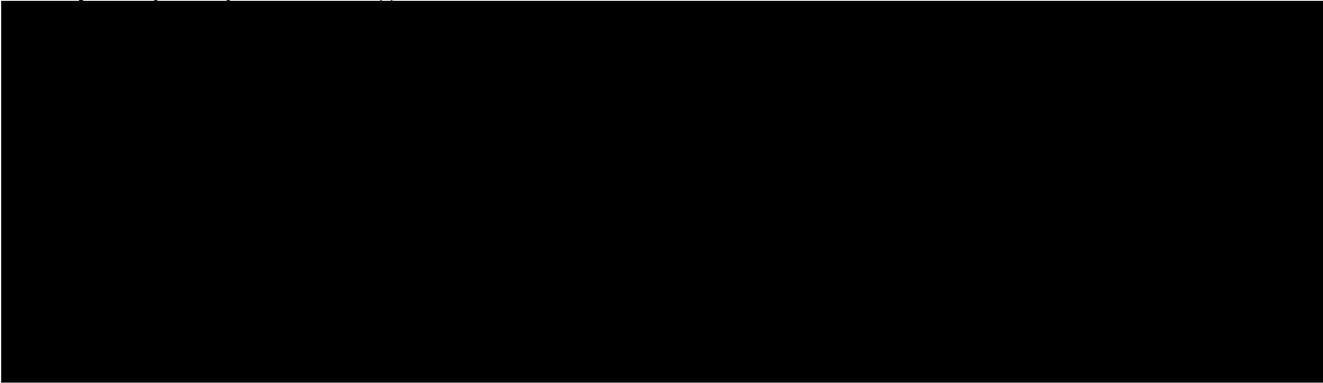
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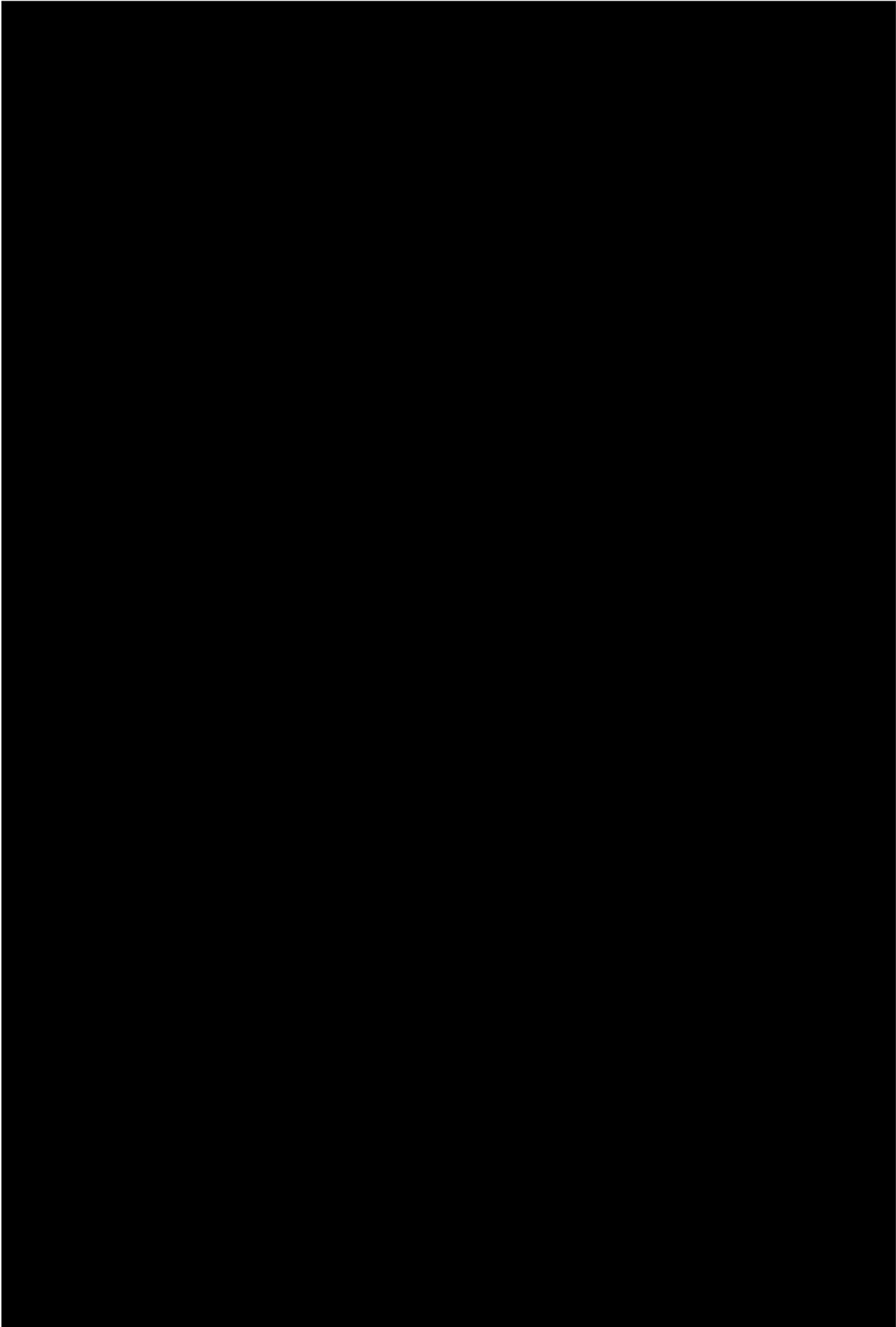
**From:** Ele Hamburger <[ele@syllaw.com](mailto:ele@syllaw.com)>  
**Sent:** Wednesday, May 11, 2022 1:03 PM  
**To:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

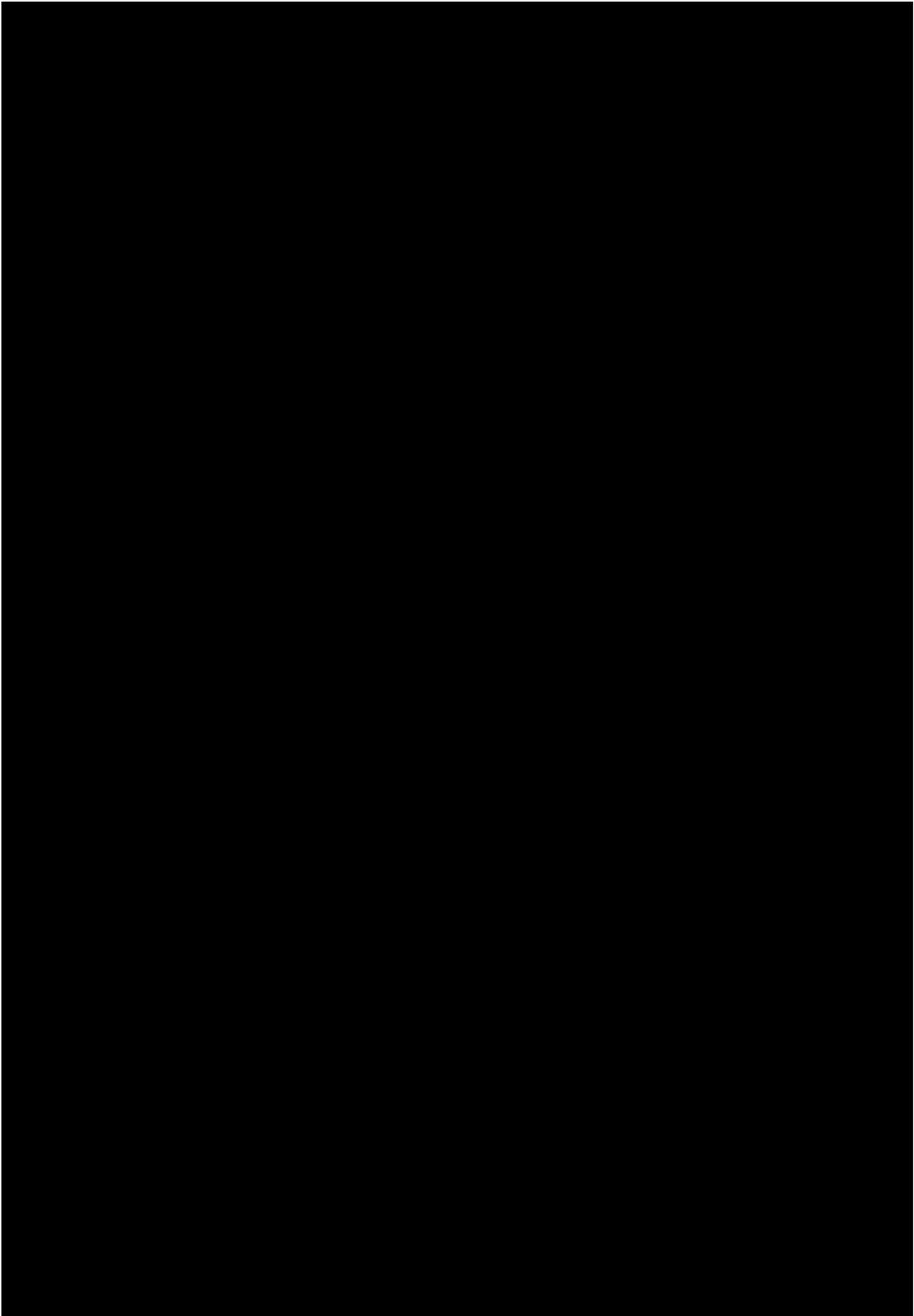
Then send us the 2021 documents. We need actual documents, not some defense counsel notes in an email.

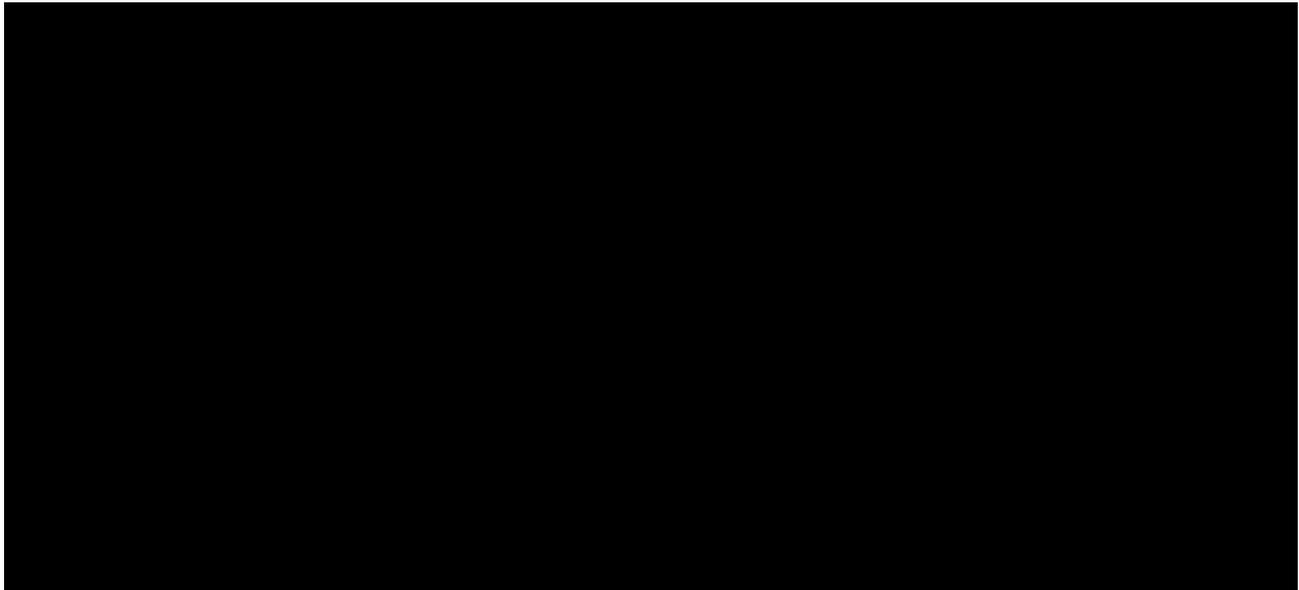
---

**From:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Sent:** Wednesday, May 11, 2022 12:43 PM  
**To:** Ele Hamburger <[ele@syllaw.com](mailto:ele@syllaw.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12









We don't have many 2022 SPDs at this time. The yellow highlighted language is the standard Illinois language.

**Gwendolyn Payton**

Kilpatrick Townsend & Stockton LLP  
Suite 3700 | 1420 Fifth Avenue | Seattle, WA 98101  
office 206 626 7714 | fax 206 299 0414  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

---

**From:** Ele Hamburger <[ele@syllaw.com](mailto:ele@syllaw.com)>  
**Sent:** Wednesday, May 11, 2022 9:41 AM  
**To:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

Dear Gwendolyn,

I am glad that you are making good time with your travels and will be available for the 3:30 pm call.

Here's the minimum information we need in advance of the Rule 30(b)(6) deposition: We need to see the standard language that BCBSIL uses and some (5-10) of the representative one-offs, both the plan documents and the BPAs for Plan year 2022. We need the total number of people enrolled in the [REDACTED] by Plan Year during the class period, as requested in long pending discovery. We also need the identities of the [REDACTED], so we can independently determine the mix of secular vs. religious for class certification.

There is no reasonable dispute that we are entitled to this information under the rules of discovery. We understood during the repeated discovery conferences this winter and spring that we would be provided at least this information in advance of the Rule 30(b)(6) deposition. **Please ensure it is provided by the close of business today.**

It does not matter that the corporate representatives are prepared to testify about these issues – we are entitled to the documentary evidence so we can test and appropriately question the corporate representatives, rather than have to react, on the spur of the moment, to their testimony whatever it may be.

Sincerely yours,

Ele

**Ele Hamburger**  
SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER PLLC  
3101 WESTERN AVENUE, SUITE 350

SEATTLE, WASHINGTON 98121

DIRECT LINE: (206) 838-1809  
GENERAL OFFICE: (206) 223-0303  
FACSIMILE: (206) 223-0246  
E-MAIL: [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)  
WEBSITE: [www.sylaw.com](http://www.sylaw.com)

I am presently working remotely but regularly checking voice messages left on my direct line

---

**From:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Sent:** Wednesday, May 11, 2022 9:08 AM  
**To:** Ele Hamburger <[ele@sylaw.com](mailto:ele@sylaw.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@sylaw.com](mailto:Daniel@sylaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

Our corporate representatives will be prepared to testify about these issues. I understand the testimony will be that:

1. The self-funded plans often write their own exclusion, as with CHI
2. They are a mix of secular and religious institutions
3. There is some standard exclusion language self-funded plans sometimes elect to use.

I am making good time travelling so I think I may be able to make the time you have asked to meet. I am doing my best to get to a place where I can take a call.

**Gwendolyn Payton**

Kilpatrick Townsend & Stockton LLP  
Suite 3700 | 1420 Fifth Avenue | Seattle, WA 98101  
office 206 626 7714 | fax 206 299 0414  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

---

**From:** Ele Hamburger <[ele@sylaw.com](mailto:ele@sylaw.com)>  
**Sent:** Tuesday, May 10, 2022 9:55 AM  
**To:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@sylaw.com](mailto:Daniel@sylaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

We also need this information to understand whether these [REDACTED] are all connected to a religious organization or include secular employers.

---

**From:** Ele Hamburger  
**Sent:** Tuesday, May 10, 2022 9:38 AM  
**To:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@sylaw.com](mailto:Daniel@sylaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

You are contesting commonality and typicality. I cannot understand why BCBSIL contends that the exclusions in other plans are so different as to destroy class certification without copies of at least some of those plans.

The late afternoon tomorrow is too late. I don't understand why you cannot produce some of these plans immediately. We have been asking for this for many months, and you never indicated that you would not produce them. Now to refuse to disclose them on the eve of the Rule 30(b)(6) deposition is improper.

---

**From:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Sent:** Tuesday, May 10, 2022 9:35 AM  
**To:** Ele Hamburger <[ele@sylaw.com](mailto:ele@sylaw.com)>

Cc: Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>

Subject: Re: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

I am not available today. I am available late tomorrow afternoon. We are not contesting numerosity and don't understand why you need them. Your injunctive relief claim does not seek damages.

**Gwendolyn Payton**

**Kilpatrick Townsend & Stockton LLP**  
Suite 3700 | 1420 Fifth Avenue | Seattle, WA 98101  
office 206 626 7714 | fax 206 299 0414  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

On May 10, 2022, at 9:19 AM, Ele Hamburger <[ele@syllaw.com](mailto:ele@syllaw.com)> wrote:

Dear Gwendolyn and Stephanie,

We appreciate the supplemental disclosure provided yesterday but there were no additional documents produced. We understand that you have identified [REDACTED] 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 [REDACTED], 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. Are you free to meet and confer about this today? I am available until 3:15 pm today. **How about 10:30 am?**

If we cannot resolve this today we may need to hold open the Rule 30(b)(6) deposition and call back the witnesses for Friday on another date when defendants' production is more complete.

Ele

**Ele Hamburger**

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER PLLC  
3101 WESTERN AVENUE, SUITE 350  
SEATTLE, WASHINGTON 98121

DIRECT LINE: (206) 838-1809  
GENERAL OFFICE: (206) 223-0303  
FACSIMILE: (206) 223-0246  
E-MAIL: [ehamburger@syllaw.com](mailto:ehamburger@syllaw.com)  
WEBSITE: [www.syllaw.com](http://www.syllaw.com)

I am presently working remotely but regularly checking voice messages left on my direct line

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## **Exhibit 9**

## Ele Hamburger

---

**From:** Ele Hamburger  
**Sent:** Thursday, January 27, 2022 9:48 AM  
**To:** Payton, Gwendolyn; Bedard, Stephanie; Neeleman, John  
**Cc:** Rountree, Ian; Omar Gonzalez-Pagan; Jenny Pizer; Daniel Gross  
**Subject:** RE: [External] C.P. v. BCBSIL - Responses to BCBSIL's First Interrogatories

When will we receive the remaining BCBSIL documents?

The discovery to date does not include any documents describing the imposition of the Exclusion in the CHI plan, the BPAs, nor anything about any other plans.

Thank you,

Ele

**From:** Payton, Gwendolyn <GPayton@kilpatricktownsend.com>  
**Sent:** Thursday, January 27, 2022 9:34 AM  
**To:** Ele Hamburger <ele@sylaw.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>; Neeleman, John <JNeeleman@kilpatricktownsend.com>  
**Cc:** Rountree, Ian <IRountree@kilpatricktownsend.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Jenny Pizer <jpizer@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>  
**Subject:** RE: [External] C.P. v. BCBSIL - Responses to BCBSIL's First Interrogatories

Thanks. We will need all the documents in enough advance of Patricia's deposition that we can prepare, so by February 16.

### Gwendolyn Payton

Kilpatrick Townsend & Stockton LLP  
Suite 3700 | 1420 Fifth Avenue | Seattle, WA 98101  
office 206 626 7714 | fax 206 299 0414  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

**From:** Ele Hamburger <ele@sylaw.com>  
**Sent:** Wednesday, January 26, 2022 2:54 PM  
**To:** Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>; Neeleman, John <JNeeleman@kilpatricktownsend.com>  
**Cc:** Rountree, Ian <IRountree@kilpatricktownsend.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Jenny Pizer <jpizer@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>  
**Subject:** C.P. v. BCBSIL - Responses to BCBSIL's First Interrogatories

Dear Counsel,

Please find attached Plaintiffs' responses to BCBSIL's first interrogatories. We will provide the response to BCBSIL's Requests for Production by Friday, and will start producing the responsive documents on a rolling basis.

Thank you,

Ele

**Ele Hamburger**

SIRIANNI YOUTZ

SPOONEMORE HAMBURGER PLLC

3101 WESTERN AVENUE, SUITE 350

SEATTLE, WASHINGTON 98121

DIRECT LINE: (206) 838-1809

GENERAL OFFICE: (206) 223-0303

FACSIMILE: (206) 223-0246

E-MAIL: [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)

WEBSITE: [www.sylaw.com](http://www.sylaw.com)

I am presently working remotely but regularly checking voice messages left on my direct line.

---

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---

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## **Exhibit 10**

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER PLLC

March 9, 2022

**BY EMAIL ONLY**

[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com)

[sbedard@kilpatricktownsend.com](mailto:sbedard@kilpatricktownsend.com)

Gwendolyn Payton  
Stephanie Bedard  
KILPATRICK TOWNSEND  
1420 Fifth Avenue, Suite 3700  
Seattle, WA 98101

**RE: C.P. v. Blue Cross Blue Shield of Illinois, No. 3:20-cv-06145-RJB**

Dear Gwendolyn and Stephanie:

This letter is to follow up on the status of discovery:

1. **Defendant's Outstanding Document Production:** Will Defendants complete their outstanding document production to Plaintiffs' first two discovery requests by March 11, 2022? If not, we are concerned that at least one of our experts may not be able to complete their disclosures on April 8, 2022, as to numerosity. We need the relevant discovery, which has been outstanding for months, as soon as possible. If you are not able to complete production by March 11, 2022, we request a discovery conference after Ms. Pritchard's deposition on Friday. If we cannot timely resolve BCBSIL's production of responsive discovery then, we may have no alternative but to move to compel.
2. **BCBSIL Rule 30(b)(6) Deposition and Deposition of Individual with Knowledge of BCBSIL's Medical Policy on Coverage of Gender Affirming Care:** Please provide us with the dates discussed for the depositions as soon as possible. We are available any dates in May except for May 13 and 17 in the morning, and possibly May 23-27.
3. **Privilege Logs:** We will provide ours shortly. Can you confirm when BCBSIL will provide its log?

Please let us know if there are any other outstanding issues.

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER PLLC

Gwendolyn Payton  
Stephanie Bedard  
March 9, 2022  
Page 2

Very truly yours,

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER

*/s/ Eleanor Hamburger*

Eleanor Hamburger

EH:tr

cc: Omar Gonzalez-Pagan  
Jenny Pizer  
Daniel Gross

# Exhibit 11

## Ele Hamburger

---

**From:** Ele Hamburger  
**Sent:** Tuesday, March 15, 2022 12:44 PM  
**To:** Payton, Gwendolyn; Bedard, Stephanie  
**Cc:** Omar Gonzalez-Pagan; Jenny Pizer; Daniel Gross  
**Subject:** CP v. BCBSIL - Follow up to meet and confer on Friday March 11, 2022

Dear Gwendolyn and Stephanie,

Just to follow up on our "meet and confer" on last Friday. Defendants agreed to get much of the outstanding discovery to us by Friday, particularly related to the medical policy in question, the BPAs, and the requested emails. Will defendants also supplement their responses to interrogatories and RFAs at that time?

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. Depending on defendants' supplemental responses to Plaintiffs' First and Second discovery requests, defendants' delay in producing this evidence may impact our ability to provide expert disclosures on April 8.

We agreed to check in again on discovery on Thursday morning at 9 am. If there are any other outstanding issues, please let us know.

Thank you,

Ele

**Ele Hamburger**  
SIRIANNI YOUTZ  
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3101 WESTERN AVENUE, SUITE 350  
SEATTLE, WASHINGTON 98121

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WEBSITE: [www.sylaw.com](http://www.sylaw.com)

I am presently working remotely but regularly checking voice messages left on my direct line.

## **Exhibit 12**

## Ele Hamburger

---

**From:** Ele Hamburger  
**Sent:** Friday, April 22, 2022 12:59 PM  
**To:** Bedard, Stephanie; Payton, Gwendolyn  
**Cc:** Omar Gonzalez-Pagan; Jenny Pizer; Daniel Gross  
**Subject:** RE: CP v. BCBSIL - Discovery conference

Dear Gwendolyn and Stephanie,

Thanks for a productive and helpful call today. I just wanted to follow up so we are all on the same page:

1. The dates for the depositions are right. Can BCBSIL provide the topics for Drake and Malec so I can figure out the right start time on May 13? We will start on June 2 at 9:30 PT, as presently identified.
2. There is no additional protective order that defendants seek at present.
3. You will confer about whether the First and Second Discovery Requests should be supplemented, apart from the numerosity information. 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. If that deadline becomes a problem, we reserve the right to reschedule the May 13 deposition depending on how large the remaining production is, and when it is produced.
4. We agreed that the June 3 deadline should be moved about a month. I will put together a stipulation along those lines.
5. We walked through the BCBSIL objections to the Amended Notice of Rule 30(b)(6) deposition:
  - a. On topic 2(c), BCBSIL will produce a witness to testify about the research and analysis that supported the provision of coverage for gender affirming care by BCBSIL
  - b. 2(d), (e), and (f), BCBSIL will produce a witness to testify about the statement in the objections that the administration of the Exclusion is not based on medical, scientific, financial or actuarial information, or any other information other than the selection of the exclusion by the employer.
  - c. 2(h) and (i) – Plaintiffs take the position that we are entitled to ask whether a legal analysis was done, who it was done by, when it was done and to whom it was communicated. Defense counsel would like to research this issue further and provide a response.
  - d. 2(n) – Defense counsel indicated that there is a written joint defense agreement with CHI in place. I requested a copy, and defense counsel will research this issue further and provide a response. I requested a privilege log for any pre-litigation communications between BCBSIL and CHI about this issue that were withheld from production as soon as possible.
  - e. 2(p) and 3 – In both of these responses, BCBSIL states that the witness’s testimony will be limited to the CHI plan. We strongly object to BCBSIL’s unilateral limitation of testimony to just the CHI plan. Plaintiffs expect the BCBSIL witnesses to testify about its standard practice, not just the practice in the CHI plan. The witnesses must be prepared to testify to these topics without limitation to the CHI plan.
  - f. 2(r) and (s) – BCBSIL should prepare a witness to explain why it does not have access to the information sought.
  - g. 4(d) – BCBSIL should have a witness prepared to explain whether it submitted the form called “an assurance” required under 45 C.F.R. 92.4 to the federal government, and if so, why the form has not been produced, and if not, why not.

Thanks again for working through these issues with me. If I missed anything or you have a different understanding, please let me know.

I hope we can wrap up most of the outstanding discovery production issues by the end of next week.

Sincerely yours,

Ele

**Ele Hamburger**

SIRIANNI YOUTZ

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E-MAIL: [ehamburger@syllaw.com](mailto:ehamburger@syllaw.com)  
WEBSITE: [www.syllaw.com](http://www.syllaw.com)

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**From:** Ele Hamburger

**Sent:** Friday, April 22, 2022 11:29 AM

**To:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>

**Cc:** Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>

**Subject:** RE: CP v. BCBSIL - Discovery conference

I forgot to mention this in the last email – Per defendants’ objections to the Rule 30(b)(96) deposition, if defendants wish to have a different protective order in place for the Rule 30(b)(6) deposition, please provide it ASAP so we can review and discuss.

**From:** Ele Hamburger

**Sent:** Friday, April 22, 2022 10:35 AM

**To:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>

**Cc:** Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@syllaw.com](mailto:Daniel@syllaw.com)>

**Subject:** CP v. BCBSIL - Discovery conference

For today’s call:

1. Confirm deposition schedule: Booker May 6 at 11, May 13 BCBSIL (Drake, Malec) – start at 7:30 PT/9:30 CT? June 2 BCBSIL (D’Anca and Reed) start time? June 12 Hatfield (tentative) June 14 Kylo (tentative). Anything else?
2. Update on when BCBSIL will supplement its first and second discovery responses
3. Any additional document production by BCBSIL? Numerosity?
4. Do we need to address the June 3 2022 deadline for discovery motions?
5. Discussion of BCBSIL objections on Rule 30(b)(6) deposition notice

**Ele Hamburger**

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WEBSITE: [www.sylaw.com](http://www.sylaw.com)

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## **Exhibit 13**

## Ele Hamburger

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**From:** Ele Hamburger  
**Sent:** Tuesday, May 3, 2022 3:00 PM  
**To:** Bedard, Stephanie; Payton, Gwendolyn  
**Cc:** Omar Gonzalez-Pagan; Jenny Pizer; Daniel Gross  
**Subject:** CP v. BCBSIL

**Importance:** High

Dear Stephanie and Gwendolyn,

Can you confirm whether defendants' production is complete and if and when defendants will supplement their responses to Plaintiffs' first and second discovery requests? If we do not get the remaining discovery right away, including the supplemental responses, we may need to reschedule or continue the upcoming Rule 30(b)(6) deposition of BCBSIL.

Thank you,

Ele

**Ele Hamburger**  
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WEBSITE: [www.sylaw.com](http://www.sylaw.com)

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## **Exhibit 14**

**From:** [Ele Hamburger](#)  
**To:** [Payton, Gwendolyn](#)  
**Cc:** [Bedard, Stephanie](#); [Omar Gonzalez-Pagan](#); [Jenny Pizer](#); [Daniel Gross](#)  
**Subject:** Re: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12  
**Date:** Tuesday, May 10, 2022 9:38:47 PM

---

Gwendolyn,

What time are you available for a meet and confer call tomorrow? I will accommodate your availability.

We are entitled to the plans and the BPAs and you have not articulated a reason why BCBSIL is not obligated to produce them. As I explained in my earlier email, since defendant deny commonality and typicality of the proposed class definition we need to understand whether there is a common standard practice running through the various exclusions, by reviewing some or all of the actual plans and the BPAs. I have been seeking this information for months, and have consistently informed you in the various emails that it was necessary for the Rule 30(b)(6) deposition.

If you do not produce the missing discovery tomorrow or participate in a meet and confer, we will move to compel.

Ele

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---

**From:** Payton, Gwendolyn <GPayton@kilpatricktownsend.com>  
**Sent:** Tuesday, May 10, 2022 7:59:17 PM  
**To:** Ele Hamburger <ele@sylaw.com>  
**Cc:** Bedard, Stephanie <Sbedard@kilpatricktownsend.com>; Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Jenny Pizer <jpizer@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

As to number 1, you still have not articulated why you need the actual plans. You have made a claim for injunctive relief that states that if we are administering plans that have exclusions, we should stop. That's it. We have told you we administer Plans with exclusions. Why do you need them? What questions would you ask a witness about them? How are they possibly relevant to any of your 30(b)6 topics?

As to number 2, isn't that number in the annual reports we sent you?

I am flying to Chicago tomorrow and am not sure I will have arrived at the time you unilaterally set.

**Gwendolyn Payton**  
**Kilpatrick Townsend & Stockton LLP**  
Suite 3700 | 1420 Fifth Avenue | Seattle, WA 98101

office 206 626 7714 | fax 206 299 0414  
[gpayton@kilpatricktownsend.com](mailto:gpayton@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

---

**From:** Ele Hamburger <[ele@sylaw.com](mailto:ele@sylaw.com)>  
**Sent:** Tuesday, May 10, 2022 3:07 PM  
**To:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@sylaw.com](mailto:Daniel@sylaw.com)>  
**Subject:** RE: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

Dear Gwendolyn and Stephanie,

Hearing nothing further from either of you (I also left a message for Stephanie, assuming that Gwendolyn was traveling today), and without any further production from defendants, I am uncertain whether we can proceed to have the deposition on Friday. At a minimum, the deposition will be held open for additional questions once defendants' discovery production is complete.

I will talk with you both tomorrow. I am setting up a call for 3:30 pm, PT. If that time does not work, please let me know immediately. However, I expect either defendants will produce tomorrow: (1) some or all of the plans identified in their supplemental disclosure, and (2) provide an adequate answer to the Interrogatory asking for the total population in the identified plans. At a minimum, at the meet and confer tomorrow, defense counsel should explain why we should proceed with the Rule 30(b)(6) deposition given the extraordinary and late disclosure of [REDACTED] that are subject to the Exclusion of gender affirming care, without any specific documentary discovery related to those [REDACTED].

Sincerely yours,

Ele

---

**From:** Payton, Gwendolyn <[GPayton@kilpatricktownsend.com](mailto:GPayton@kilpatricktownsend.com)>  
**Sent:** Tuesday, May 10, 2022 9:35 AM  
**To:** Ele Hamburger <[ele@sylaw.com](mailto:ele@sylaw.com)>  
**Cc:** Bedard, Stephanie <[Sbedard@kilpatricktownsend.com](mailto:Sbedard@kilpatricktownsend.com)>; Omar Gonzalez-Pagan <[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)>; Jenny Pizer <[jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org)>; Daniel Gross <[Daniel@sylaw.com](mailto:Daniel@sylaw.com)>  
**Subject:** Re: [External] CP v. BCBSIL -- Supplemental documents to RFP No. 12

I am not available today. I am available late tomorrow afternoon. We are not contesting numerosity and don't understand why you need them. Your injunctive relief claim does not seek damages.



**Gwendolyn Payton**

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On May 10, 2022, at 9:19 AM, Ele Hamburger <[ele@syllaw.com](mailto:ele@syllaw.com)> wrote:

Dear Gwendolyn and Stephanie,

We appreciate the supplemental disclosure provided yesterday but there were no additional documents produced. We understand that you have identified at least [REDACTED] 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 [REDACTED], 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. Are you free to meet and confer about this today? I am available until 3:15 pm today. **How about 10:30 am?**

If we cannot resolve this today we may need to hold open the Rule 30(b)(6) deposition and call back the witnesses for Friday on another date when defendants’ production is more complete.

Ele

**Ele Hamburger**  
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## **Exhibit 15**

**From:** [Ele Hamburger](#)  
**To:** [Payton, Gwendolyn](#); [Bedard, Stephanie](#)  
**Cc:** [Omar Gonzalez-Pagan](#); [Jenny Pizer](#); [Daniel Gross](#)  
**Subject:** RE: CP v. BCBSIL -- Meet and Confer  
**Date:** Wednesday, May 11, 2022 4:07:00 PM

---

Dear Gwendolyn,

This email is to follow up on our conversation today. We agreed that for the most part, this dispute cannot be resolved without a motion to compel. We also agreed to proceed with Fridays deposition, where I will note that we will hold the deposition open and recall witnesses once the Court rules on the anticipated motion to compel.

1. Interrogatory No. 6 – this issue remains. Defendant agreed to produce the ASO “off the shelf” standard plan with the standard language related to gender affirming care and to produce quotations of the various permutations of the exclusion in a formal discovery response. No other agreement about the Interrogatory or related document production was reached. Plaintiffs offered to receive redacted versions of the various permutations of the gender affirming care language in the [REDACTED], but defendant rejected that approach.
2. Interrogatory No. 8 – this issue remains. Plaintiffs’ counsel asserted if the identities of the plans were produced, Plaintiffs’ counsel could look up the enrollment on the DOL Form 5500 that is publicly filed. Defendant rejected that approach.
3. Requests for Production No. 12, 13, 14 – these issues remains.
4. Request for Production No. 15 and privilege log – the parties are considering whether to stipulate to *in camera* review by the Court.

Please let me know if you have a different understanding of our conversation today. Thank you,

Sincerely yours,

Ele

**Ele Hamburger**  
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WEBSITE: [www.sylaw.com](http://www.sylaw.com)

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---

**From:** Ele Hamburger

**Sent:** Wednesday, May 11, 2022 3:18 PM

**To:** Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>

**Cc:** Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Jenny Pizer <jpizer@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>

**Subject:** CP v. BCBSIL -- Meet and Confer

Dear Gwendolyn and Stephanie,

I want to clarify the scope of the current discovery dispute during our call this afternoon, so that we can move forward to a motion to compel in an orderly manner:

1. Interrogatory No. 6 – the identity of the plans for which BCBSIL administers exclusions of gender affirming care – This information is not produced. Instead, defendants provided a “preliminary” count of affected plans.
2. Interrogatory No. 8 – the total number of unique enrollees in each plan administered by BCBSIL that contains an exclusion of gender affirming care. This number is not produced. Instead, defendants provided the number of people denied gender affirming care in the affected plans. While interesting, this is not the information requested.
3. Request for Production No. 12, 14 – all contracts, BPAs, or other applications or agreements related to the plans identified in Interrogatory No. 6. We have offered a sampling approach on this to address any concerns about the burden for defendants, but defendants have refused, contending that if we are to receive any of these documents, we must obtain a court order. Defendants, however, have not identified any basis for withholding these documents other than claiming that Plaintiffs do not “require” them.
4. Request for Production No. 13 - Emails and communications related to the plans identified in Interrogatory No. 6 related to treatment for gender dysphoria or a gender affirming care exclusion. Our position is the same as in #3.
5. Request for Production No. 15 – communications related to plans identified in Interrogatory No. 6 related to compliance with Section 1557 that is not subject to attorney client privilege or the fiduciary exception. Specifically, Defendants have withheld documents described in the privilege log just provided, that may not be attorney-client privilege or may be exempt pursuant to the fiduciary exception. *See Stephan v. Unum Life Ins. Co.*, 697 F.3d 917, 931-32 (9th Cir. 2012). First, it is unclear if the communications actually involve any attorneys, since attorneys are not specifically identified on the privilege log. Second, all of the documents listed appear to be from before C.P.’s final appeal and appear to be about plan administration. *See A.F. v. Providence*, 173 F. Supp. 3d 1061, 1078 (D. Or., March 26, 2016). Accordingly, all of the documents listed in the privilege log should be disclosed.

As I have told you repeatedly over the past few months, we need this information for the Rule 30(b) (6) deposition. We will proceed on Friday but we will continue the deposition and reserve the right to recall all witnesses, once defendants’ production is complete.

I look forward to speaking with you further shortly.

Ele

**Ele Hamburger**

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## **Exhibit 16**

**BCBSIL PRIVILEGE LOG 5/10/2022**  
**C.P. v. BCBSIL, #3:20-cv-06145-RJB**

Privilege Log No.	Date Family	Sent From	Sent To	Sent CC	Subject	File Name	Privilege Treatment	Privilege Reason	Privilege Description
1	2/27/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>	FW: Denied claim	FW: Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
2	2/28/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>	RE: Denied claim	RE: Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
3	2/28/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
4	3/1/2017	"telisa drake" <1829e1194ee547fc85e4c12710a6dc21-u251800@exchangelabs.com>	bealt@bcbsil.com;kimberlynorton@catholichealth.net	shelleyhines@catholichealth.net	RE: Denied claim	RE: Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
5	3/1/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>	RE: Denied claim	RE: Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
6	3/2/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
7	3/3/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;"hines, michelle" <shelleyhines@catholichealth.net>	telisa drake <telisa_drake@bcbsil.com>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

BCBSIL PRIVILEGE LOG 5/10/2022  
C.P. v. BCBSIL, #3:20-cv-06145-RJB

8	3/3/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;william sweeney <wsweeney@polsinelli.com>	FW: PHI Denied claim #secure#	FW: PHI Denied claim #secure#	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
9	3/3/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;william sweeney <wsweeney@polsinelli.com>	PHI Denied claim #secure#	PHI Denied claim #secure#	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
10	3/3/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;william sweeney <wsweeney@polsinelli.com>	RE: PHI Denied claim #secure#	RE: PHI Denied claim #secure#	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
11	3/3/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;william sweeney <wsweeney@polsinelli.com>	PHI Denied claim #secure#	PHI Denied claim #secure#	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
12	3/24/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>	elisa sornat <elisa_sornat@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	PHI Pritchard misquote	PHI Pritchard misquote	Privileged - Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
13	3/24/2017			Catholic Health Initiatives_transgender services letter_v7.docx			Privileged - Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
14	3/29/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;elisa sornat <elisa_sornat@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	RE: PHI Pritchard misquote	RE: PHI Pritchard misquote	Privileged - Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

**BCBSIL PRIVILEGE LOG 5/10/2022**  
**C.P. v. BCBSIL, #3:20-cv-06145-RJB**

15	3/29/2017					# 58014886 v 1 (Catholic Health Initiatives_transgen der services letter_....docx	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
16	4/4/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>	"hines, michelle" <shelleyhines@catholichealth.net>;elisa sornat <elisa_sornat@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	PHI Pritchard misquote	PHI Pritchard misquote	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
17	4/4/2017				Catholic Health Initiatives_transgen der services letter_v8.docx	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel	
18	4/26/2017	trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;"norton, kimberly" <kimberlynorton@catholichealth.net>	elisa sornat <elisa_sornat@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	PHI Pritchard misquote	PHI Pritchard misquote	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
19	10/13/2017	trisha beal <bealt@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;diane hubburch <diane_hubburch@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>;"hines, michelle" <shelleyhines@catholichealth.net>;william sweeney <wsweeney@polsinelli.com>	PHI Patricia Pritchard EE200934 Case 20662121	PHI Patricia Pritchard EE200934 Case 20662121	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
20	10/13/2017				Pritchard Decision Letter.pdf	Pritchard Decision Letter.pdf	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel

**BCBSIL PRIVILEGE LOG 5/10/2022  
C.P. v. BCBSIL, #3:20-cv-06145-RJB**

21	10/13/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	diane hubbuch <diane_hubbuch@bcbsil.com>; telisa drake <telisa_drake@bcbsil.com>; trisha beal <beal@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>; "hines, michelle" <shelleyhines@catholichealth.net>; william sweeney <wsweeney@polsinelli.com>	RE: PHI Patricia Pritchard EE200934 Case 20662121	RE: PHI Patricia Pritchard EE200934 Case 20662121	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
22	10/13/2017	"telisa drake" <1829e1194ee547fc85e4c12710a6dc21-u251800@exchangelabs.com>	beal@bcbsil.com;diane_hubbuch@bcbsil.com;kimberlynorton@catholichealth.net	adambenedict@catholichealth.net;shelleyhines@catholichealth.net;wsweeney@polsinelli.com	PHI Patricia Pritchard EE200934 Case 20662121	PHI Patricia Pritchard EE200934 Case 20662121	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
23	10/13/2017	trisha beal <beal@bcbsil.com>	"norton, kimberly" <kimberlynorton@catholichealth.net>;diane hubbuch <diane_hubbuch@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>; "hines, michelle" <shelleyhines@catholichealth.net>; william sweeney <wsweeney@polsinelli.com>	PHI Patricia Pritchard EE200934 Case 20662121	PHI Patricia Pritchard EE200934 Case 20662121	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
24	10/13/2017				Pritchard complaint and appeal timeline.docx		Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
25	10/13/2017				WB Edited Pritchard EI Determination Letter.docx		Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
26	10/13/2017				Pritchard Civil Rights Complaints.docx		Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel

BCBSIL PRIVILEGE LOG 5/10/2022  
C.P. v. BCBSIL, #3:20-cv-06145-RJB

27	10/16/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	diane hubbuch <diane_hubbuch@bcbsil.com>;galye burchard <burchardg@bcbsil.com>;telisadrake <telisa_drake@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>;williamsweeney <wsweeney@polsinelli.com>	FW: PHI Patricia Pritchard EE200934 Case 20662121	FW: PHI Patricia Pritchard EE200934 Case 20662121	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
28	10/16/2017				WB Edited Pritchard EI Determination Letter.docx		Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
29	10/16/2017				Pritchard Civil Rights Complaints.docx		Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
30	10/16/2017				Pritchard complaint and appeal timeline.docx		Privileged Withhold - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
31	10/18/2017	"norton, kimberly" <kimberlynorton@catholichealth.net>	diane hubbuch <diane_hubbuch@bcbsil.com>;galye burchard <burchardg@bcbsil.com>;telisadrake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>;williamsweeney <wsweeney@polsinelli.com>	FW: #secure# Patricia Pritchard EE200934 Case 20662121 #secure#	FW: #secure# Patricia Pritchard EE200934 Case 20662121 #secure#	Privileged Withhold - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

BCBSIL PRIVILEGE LOG 5/10/2022  
C.P. v. BCBSIL, #3:20-cv-06145-RJB

32	1/8/2018	diane hubburch <diane_hubbuch@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>; "hines, michelle" <shelleyhines@catholichealth.net>; "norton, kimberly" <kimberlynorton@catholichealth.net>; william sweeney <wsweeney@polsinelli.com>	kathy corbin <kathy_corbin@bcbsil.com>	BPA updates and follow up - Privileged & Confidential	BPA updates and follow up - Privileged & Confidential	Privileged - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
33	1/8/2018				Affiliated Contract_CHI_Add_2017_10_23.doc		Privileged - JDA Agreement	Joint Defense Agreement	Attachment to communications reflecting legal advice from counsel
34	11/1/2018	"hines, michelle" <shelleyhines@catholichealth.net>	amanda miller <millera2@bcbsil.com>; telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	FW: PHI Denied claim	FW: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
35	11/2/2018	telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>; amanda miller <millera2@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
36	11/2/2018	"hines, michelle" <shelleyhines@catholichealth.net>	amanda miller <millera2@bcbsil.com>; telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
37	11/2/2018	"hines, michelle" <shelleyhines@catholichealth.net>	'amanda miller' <millera2@bcbsil.com>; 'telisa drake' <telisa_drake@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

**BCBSIL PRIVILEGE LOG 5/10/2022**  
**C.P. v. BCBSIL, #3:20-cv-06145-RJB**

38	11/2/2018	telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
39	11/2/2018	telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
40	11/2/2018	"hines, michelle" <shelleyhines@catholichealth.net>	amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
41	11/2/2018		beal@bcbsil.com;millera2@bcbsil.com;shelleyhines@catholichealth.net	adambenedict@catholichealth.net	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
42	11/2/2018	telisa drake <telisa_drake@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
43	11/2/2018	trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

BCBSIL PRIVILEGE LOG 5/10/2022  
C.P. v. BCBSIL, #3:20-cv-06145-RJB

44	11/2/2018	"hines, michelle" <shelleyhines@catholichealth.net>	amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
45	11/5/2018	"hines, michelle" <shelleyhines@catholichealth.net>	'amanda miller' <millera2@bcbsil.com>;'telisa drake' <telisa_drake@bcbsil.com>;'trisha beal' <bealt@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
46	11/5/2018	trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
47	11/6/2018	trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
48	11/7/2018	"hines, michelle" <shelleyhines@catholichealth.net>	amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>;trisha beal <bealt@bcbsil.com>	"benedict, adam" <adam.benedict@catholichealth.net>	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

BCBSIL PRIVILEGE LOG 5/10/2022  
C.P. v. BCBSIL, #3:20-cv-06145-RJB

49	11/8/2018	"amanda miller" <813d08e33751424a8dafeb23cec07589-u255172@exchangelabs.com>	bealt@bcbsil.com;shelleyhines@catholichealth.net;telisa_drake@bcbsil.com	adambenedict@catholichealth.net	RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
50	11/8/2018		millera2@bcbsil.com;shelleyhines@catholichealth.net;telisa_drake@bcbsil.com	adambenedict@catholichealth.net	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
51	11/8/2018	trisha beal <bealt@bcbsil.com>	"hines, michelle" <shelleyhines@catholichealth.net>;amanda miller <millera2@bcbsil.com>;telisa drake <telisa_drake@bcbsil.com>	"benedict, adam" <adambenedict@catholichealth.net>	PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
52	1/22/2019	"hines, michelle" <shelleyhines@catholichealth.net>	trisha beal <bealt@bcbsil.com>		RE: PHI Denied claim	RE: PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel
53	1/24/2019	"trisha beal" <e6b5d54f898f4c1686d896b79429789c-u32822@exchangelabs.com>	shelleyhines@catholichealth.net		PHI Denied claim	PHI Denied claim	Privileged - Redact - JDA Agreement	Joint Defense Agreement	Communication reflecting legal advice from counsel

HONORABLE JUDGE ROBERT J. BRYAN

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

C. P., by and through his parents,  
Patricia Pritchard and Nolle Pritchard;  
and PATRICIA PRITCHARD,

Plaintiffs,

vs.

BLUE CROSS BLUE SHIELD OF  
ILLINOIS,

Defendant.

Case No. 3:20-cv-06145-RJB

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO SEAL  
MOTION TO COMPEL BRIEFING**

PROPOSED ORDER

**KILPATRICK TOWNSEND & STOCKTON LLP**  
1420 FIFTH AVENUE, SUITE 3700  
SEATTLE, WA 98101  
(206) 626-7713 FAX: (206) 260-8946

1 THIS MATTER having come before the below-signed Judge of the above-entitled Court  
2 upon Defendants' Motion to Seal Motion to Compel Briefing, and the Court having considered  
3 the motion and the pleadings in this matter, and it appearing to be in the best interest of the case,  
4 therefore,

5 IT IS HEREBY ORDERED that Defendants' Motion to Seal Motion to Compel Briefing  
6 is GRANTED.

7 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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10 \_\_\_\_\_  
11 THE HONORABLE ROBERT J. BRYAN  
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**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, DEFENDANT BLUE CROSS BLUE SHIELD OF ILLINOIS'S PROPOSED ORDER ON MOTION TO SEAL MOTION TO COMPEL BRIEFING, to be filed with the Clerk of the Court via the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following attorneys of record:

<p><b>Eleanor Hamburger</b>                  SIRIANNI YOUTZ SPOONEMORE                  HAMBURGER                  3101 WESTERN AVENUE STE 350                  SEATTLE, WA 98121                  206-223-0303                  Fax: 206-223-0246                  Email: ehamburger@sylaw.com</p>	<p><input checked="" type="checkbox"/> by CM/ECF  <input type="checkbox"/> by Electronic Mail  <input type="checkbox"/> by Facsimile Transmission  <input type="checkbox"/> by First Class Mail  <input type="checkbox"/> by Hand Delivery  <input type="checkbox"/> by Overnight Delivery</p>
<p><b>Jennifer C Pizer</b>                  LAMBDA LEGAL DEFENSE AND                  EDUCATION FUND, INC.                  4221 WILSHIRE BLVD., STE 280                  LOS ANGELES, CA 90010                  213-382-7600                  Email: jpizer@lambdalegal.org</p>	<p><input checked="" type="checkbox"/> by CM/ECF  <input type="checkbox"/> by Electronic Mail  <input type="checkbox"/> by Facsimile Transmission  <input type="checkbox"/> by First Class Mail  <input type="checkbox"/> by Hand Delivery  <input type="checkbox"/> by Overnight Delivery</p>
<p><b>Omar Gonzalez-Pagan</b>                  LAMBDA LEGAL DEFENSE AND                  EDUCATION FUND, INC. (NY)                  120 WALL STREET                  19TH FLOOR                  NEW YORK, NY 10005                  212-809-8585                  Email: ogonzalez-pagan@lambdalegal.org</p>	<p><input checked="" type="checkbox"/> by CM/ECF  <input type="checkbox"/> by Electronic Mail  <input type="checkbox"/> by Facsimile Transmission  <input type="checkbox"/> by First Class Mail  <input type="checkbox"/> by Hand Delivery  <input type="checkbox"/> by Overnight Delivery</p>

DATED this 6th day of June, 2022.

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Gwendolyn C. Payton  
 Gwendolyn C. Payton, WSBA #26752

*Counsel for Blue Cross Blue Shield of Illinois*