

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,

Defendant.

NO. 3:20-cv-06145-RJB

PLAINTIFFS' RESPONSE TO BCBSIL'S
MOTION TO SEAL MOTION TO
COMPEL BRIEFING (Dkt. No. 55)

- AND -

PLAINTIFFS' MOTION TO SEAL
PURSUANT TO PROTECTIVE ORDER
(Dkt. No. 25)

Note on Motion Calendar:

- **BCBSIL's Motion to Seal: June 17, 2022**
- **Pltfs' Motion to Seal: June 24, 2022**

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I. INTRODUCTION

Plaintiffs object to BCBSIL’s motion to seal and redact the following categories of information: (1) the number of plans for which it administers a gender affirming care exclusion, (2) the number and amount of denied claims administered by BCBSIL under these exclusions; (3) the number of enrollees in the Catholic Health Initiatives (“CHI”) plan and (4) the exemplar language from unidentified Summary Plan Descriptions (“SPD”) administered by BCBSIL when plans exclude gender affirming care. *See* Dkt. No. 55-1, 55-2.

BCBSIL’s motion fails for at least three reasons:

First, BCBSIL failed to designate this information as confidential when it produced the information to Plaintiffs. *Hamburger Decl., Exh. 1; Dkt. No. 53, Exh. 5, Response to Interrogatory No. 7, p. 61 out of 135; Exh. 6, p. 72 out of 135 (same), Exh. 7, Response to Interrogatory No. 6, pp. 83-84 out of 135.*¹

Second, BCBSIL failed to identify any specific reason why such information is “confidential,” either under the terms of the existing protective order or Ninth Circuit caselaw. *See Hamburger Decl., Exh. 1.* Even in its brief, BCBSIL fails to explain how there is good cause to seal and redact this information. *See generally, Dkt. No. 55.*

Third, none of the information is actually confidential. The number of enrollees on the CHI plan and the other plans can be adduced from the Form 5500 filings with the U.S. Department of Labor. *See Hamburger Decl., ¶2.* The SPD language not confidential since it is distributed to plan members and is often posted on employer’s websites. *Id.* And while it may be embarrassing to BCBSIL if the full extent to which it administers

¹ BCBSIL is wrong when it asserts, without citation, that this information was “designated as Confidential pursuant to the Stipulated Protective Order.” Dkt. No. 55, p. 2:23-25.

1 gender affirming care exclusions is made public, that is no basis for sealing and redacting
2 the information.

3 II. ARGUMENT

4 A. BCBSIL Must Demonstrate “Good Cause” to Seal and Redact the 5 Information.

6 In the Ninth Circuit, there is a strong presumption of public access to court filings
7 and documents attached to both dispositive and non-dispositive motions. *Kamakana v.*
8 *City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Generally, “a party
9 seeking to seal judicial records must show that ‘compelling reasons supported by specific
10 factual findings ... outweigh the general history of access and the public policies
11 favoring disclosure.’” *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010),
12 quoting *Kamakana*, 447 F.3d at 1178. For documents “unearthed during discovery” that
13 are not part of the judicial record, the party seeking to protect the documents must
14 demonstrate “good cause.” *Id.*, citing to Fed. R. Civ. P. 26(c); *Phillips v. GMC*, 307 F.3d
15 1206, 1213 (9th Cir. 2002). Good cause may be demonstrated by showing a
16 “particularized harm” resulting from the disclosure that outweighs the public interest in
17 the information. *Welle v. Provident Life & Accident Ins. Co.*, 2013 U.S. Dist. LEXIS 162524,
18 at *3 (N.D. Cal. Nov. 14, 2013).

19 Broad allegations of harm, unsubstantiated by specific examples or articulated
20 reasoning are not sufficient reason to seal a document for “good cause.” *Beckman Indus.,*
21 *Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992); see, e.g., *Kamakana*, 447 F.3d at 1186
22 (magistrate judge properly concluded that party’s claim of “good cause” to seal records
23 filed in support of a non-dispositive motion was not “asserted with sufficient
24 particularity” and failed “to demonstrate any specific prejudice or harm”). Where only
25 “boilerplate references” about “competitive disadvantage if the information were
26 publicly available” are made, the party seeking to seal the document fails to meet its

1 burden. *Welle*, 2013 U.S. Dist. LEXIS 162524, at *6. Nor may a party seal a judicial
2 document simply because it may be embarrassing or expose the party to further
3 litigation. *Kamakana*, 447 F.3d at 1179.

4 **B. BCBSIL Makes No Specific or Particular Showing of Good Cause.**

5 Here, BCBSIL failed to offer any specific reasons for the proposed redactions
6 either before filing its Motion to Seal/Redact, or in the motion itself. *See* Hamburger
7 Decl. (6/13/22), ¶4, *Exh. 1*; Dkt. No. 55. At most, BCBSIL vaguely claims that disclosure
8 of the number of plans for which it administers gender affirming care exclusions, and
9 the total number of denied claims and their amounts would harm the unidentified
10 “ERISA self-funded group plans” that BCBSIL administers and other unidentified “non-
11 parties.” Dkt. No. 55, pp. 2-3. BCBSIL provides no particular evidence of any harm or
12 prejudice that may result from the disclosure of numbers they seek to redact from
13 Plaintiffs’ motion and declaration. *See* Dkt. No. 55. Indeed, BCBSIL was so unconcerned
14 about the disclosure of this de-identified data, that it never designated the information
15 as “confidential” when it produced it to Plaintiffs. *Hamburger Decl. (6/13/22), Exh. 1*;
16 *Dkt. No. 53, Exh. 5*, Response to Interrogatory No. 7, p. 61 out of 135; *Exh. 6*, p. 72 out of
17 135 (same), *Exh. 7*, Response to Interrogatory No. 6, pp. 83-84 out of 135. Without more,
18 BCBSIL has no basis for sealing this information on behalf of the health plans for which
19 it administers the gender affirming care Exclusions.

20 BCBSIL also claims that it has a “privacy interest” in what it claims is “proprietary
21 business information.” Dkt. No. 55, p. 3. Yet BCBSIL does not explain why the
22 information it seeks to redact is proprietary or that revealing it would cause specific
23 harm to BCBSIL. BCBSIL’s mere assertion that the information is “proprietary” is simply
24 boilerplate, and insufficient to demonstrate good cause.

1 Finally, the information BCBSIL seeks to redact is not confidential. The SPD
2 language is generally distributed to plan members, often through a company's website.
3 Hamburger Decl., ¶2. The numbers of people enrolled in the CHI plan and in other self-
4 funded plans are publicly available through the U.S. Department of Labor's Form 5500
5 filings. *See id.* And it is already public that BCBSIL administers a gender affirming care
6 exclusion on behalf of the CHI plan and many others. *See* Dkt. No. 23; Dkt. No. 58, p. 8
7 (BCBSIL conceded numerosity).

8 **III. CONCLUSION**

9 The Court should deny BCBSIL's Motion to Seal/Redact in full.

10 **IV. PLAINTIFFS' MOTION TO SEAL/REDACT**
11 **EXHIBIT 1 TO HAMBURGER DECLARATION**

12 Pursuant to Local Civil Rule 5(g), and in accordance with the directions of counsel
13 for Defendant BCBSIL, Plaintiff files this Motion to Seal/Redact so that BCBSIL may
14 satisfy the requirements of LCR 5(g)(3)(B) in its responsive briefing.

15 As certified by Plaintiffs' counsel, defense counsel was provided a copy of the
16 exhibits labeled "confidential" that Plaintiffs intended to use to support their reply brief
17 and this response to Defendants' Motion to Seal Motion to Compel Briefing on Thursday,
18 June 9, 2022. Hamburger Decl. (6/13/22), ¶5. Defense counsel indicated that the
19 Exhibit 1 should be filed under seal. *Id.*

20 Plaintiffs will address any objections to BCBSIL's proposed sealing or redactions
21 in their reply briefing, if any.

1 DATED: June 13, 2022.

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The Honorable Robert J. Bryan

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[PROPOSED]
ORDER DENYING DEFENDANT
BCBSIL'S MOTION TO SEAL MOTION
TO COMPEL BRIEFING

THIS MATTER having come before the below-signed Judge of the above-entitled Court upon Defendant BCBSIL's Motion to Seal Motion to Compel Briefing, and the Court having considered the Motion, Plaintiffs' Response, BCBSIL's Reply, if any, and the records and pleadings in this matter.

Based upon the foregoing and for good cause shown, the Court ORDERS that Defendant BCBSIL's Motion to Seal Motion to Compel Briefing (Dkt. No. 55) is DENIED. The following documents shall remain unsealed or shall be filed/refiled in the record in unredacted and unsealed form:

- Plaintiffs' Motion to Compel Discovery (Dkt. No. 52);

- Declaration of Eleanor Hamburger in Support of Plaintiff's Motion to Compel (Dkt. No. 53);
- BCBSIL's Response to Plaintiffs' Motion to Compel (Dkt. No. 56); and
- Declaration of Gwendolyn C. Payton in Support of BCBSIL's Response to Plaintiffs' Motion to Compel (Dkt. No. 57).

DATED this _____ day of June, 2022.

Robert J. Bryan
United States District Judge

Presented by:

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