

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' REPLY IN SUPPORT OF  
MOTION TO SEAL MOTION TO COMPEL  
BRIEFING**

**I. INTRODUCTION**

Pursuant to Federal Rules of Civil Procedure and LCR 5(g)(3), Defendant Blue Cross Blue Shield of Illinois (“BCBSIL”) hereby files this reply to “Plaintiffs’ Response to BCBSIL’s Motion to Seal Motion to Compel Briefing and Plaintiffs’ Motion to Seal Pursuant to Protective Order” [Dkt. 61], which opposed BCBSIL’s Motion to Seal Motion to Compel Briefing [Dkt. 55]. BCBSIL’s motion seeks leave to re-designate the following documents as filed under seal:

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

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

- BCBSIL’s Response to Plaintiffs’ Motion to Compel; and
- Declaration of Gwendolyn C. Payton in Support of BCBSIL’s Response to Plaintiffs’ Motion to Compel.

Regardless, BCBSIL’s confidential designations are substantively correct, and the Court should grant its Motion to Seal Motion to Compel Briefing.

**II. ARGUMENT**

BCBSIL has taken reasonable steps to designate and re-designate as confidential the evidence it seeks to seal in accordance with the Court’s protective order and LCR 5(g). BCBSIL also provided reasonable notice to Plaintiffs that it intended to move to seal evidence and offered Plaintiffs the opportunity to review and provide comment on BCBSIL’s proposed redactions. *See* [Dkt. 55]. Plaintiffs failed to do so.

Substantively, there is good cause to seal the Motion to Compel Briefing, as it contains confidential and proprietary information concerning ERISA self-funded group plans administered by BCBSIL for non-parties. This confidential information, which is not publicly available, contains “sources of business information that might harm [BCBSIL’s] competitive standing.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). “Confidential business information has long been recognized as property.” *Carpenter v. United States*, 484 U.S. 19, 26 (1987). This includes contracts with third-parties. *See Nicolosi Distrib., Inc. v. Finishmaster*,

1 *Inc.*, No. 18-CV-03587-BLF, 2018 WL 3932554, at \*3 (N.D. Cal. Aug. 16, 2018) (“Courts  
2 regularly find that litigants may file under seal contracts with third parties that contain proprietary  
3 and confidential business information.”). The risk of competitive harm is widely accepted as a  
4 compelling reason to grant a motion to seal and is determinative of confidentiality.

5 *See e.g., id.* (“Public disclosure of this information to Defendant’s competitors could harm  
6 Defendant.”); *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016)  
7 (determining the release of a document that may harm a litigant’s competitive standing is a  
8 compelling reason to seal a document); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214,  
9 1221-22 (Fed. Cir. 2013) (concluding one factor supporting sealing a document is when the  
10 release of the document will cause competitive harm to a business).

11 The information is competitively sensitive because BCBSIL competes with other  
12 companies offering third-party administrative services for the business of the ERISA self-funded  
13 groups. BCBSIL’s competitors would gain an unfair advantage if they learned details regarding  
14 the services provided by BCBSIL, including the number and identity of groups for which  
15 BCBSIL administers health plans and the plan design of those administrative services.

16 The public dissemination of this confidential information would also harm the direct  
17 interests of ERISA self-funded groups administered by BCBSIL, whose confidential information  
18 is contained in the Benefit Program Applications (“BPAs”) and Summary Plan Descriptions  
19 (SPDs) Plaintiffs seek to make public. The groups for which BCBSIL administers plans have a  
20 significant interest in keeping confidential the documents related to or created by those groups.  
21 Contrary to Plaintiffs’ assertions, each SPD is customizable by the group, and SPDs can vary  
22 widely in what they cover and do not cover. Merely because an SPD may be distributed to  
23 individual members of a group plan does not mean that the identity of those plans and proprietary  
24 information about those plans should be filed on the public record.

25 Plaintiffs provide no explanation as to why this information should not be sealed other  
26 than to penalize BCBSIL and its clients and perhaps try to gain a public relations advantage,  
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1 which does not justify discovery or the public disclosure of confidential and proprietary business  
2 information.

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

6 **III. CONCLUSION**

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

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10 Respectfully submitted, this 21st day of June, 2022.

11 KILPATRICK TOWNSEND & STOCKTON LLP

12 By /s/ Gwendolyn C. Payton  
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**CERTIFICATE OF SERVICE**

I certify that on the date indicated below I caused a copy of the foregoing document, DEFENDANTS’ REPLY IN SUPPORT OF 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 21st 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*