

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' REPLY RE:
PLACEHOLDER MOTIONS TO SEAL
PURSUANT TO PROTECTIVE ORDER
(Dkt. No. 25)

**Note on Motion Calendar:
June 24, 2022**

Plaintiffs object to BCBSIL's proposal 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. Nos. 55-1, 55-2, 61. BCBSIL does not identify any "good cause" for this information to be redacted from the public record, aside from its boilerplate claims that the information is "proprietary." *See* Dkt. No. 68.

BCBSIL also filed its self-styled "Reply" (Dkt. No. 68) as a responsive brief to the two pending placeholder Motions to Seal/Redact filed by Plaintiffs at BCBSIL's request, pursuant to LCR 5(g). *See* Dkt. Nos. 61, 64. This reply brief is in response to BCBSIL's

1 claims that the documents filed under seal pursuant to those placeholder motions are
2 confidential. *See* Dkt. Nos. 62-1, 66-1, 66-2.

3 Plaintiffs object to the sealing of Docket No. 62-1, which merely contains
4 communication between counsel about the confidentiality of the disputed documents,
5 without any confidential information.

6 Plaintiffs do not object to the redaction of certain confidential information in
7 Docket Nos. 66-1 and 66-2 that has been marked confidential by BCBSIL. However,
8 BCBSIL must come forward with the appropriately redacted exhibits. They have not
9 done so to date.

10 BCBSIL also misrepresents the information that it seeks to seal. Public disclosure
11 of the identities of the ERISA self-funded groups administered by BCBSIL that have
12 gender affirming care exclusions is not at issue in any pending motion to seal/redact.
13 *See* Dkt. Nos. 55, 61, 64. *That information has been withheld by BCBSIL* and is the subject
14 of Plaintiffs' pending Motion to Compel. Dkt. No. 52; *compare* Dkt. No. 68 (BCBSIL
15 misleadingly claims that "confidential information [about the ERISA self-funded plans]
16 is contained in the Benefit Program Applications ("BPAs") and Summary Plan
17 Descriptions (SPDs) Plaintiffs seek to make public"). If the Court orders BCBSIL to
18 produce the identities of the ERISA self-funded plans, BCBSIL may still designate the
19 information as "CONFIDENTIAL" under Docket No. 25, and Plaintiffs will maintain the
20 information confidentially as required, unless and until the Court orders otherwise.

21 All that is at issue in the pending motions to seal/redact are whether the number
22 of plans that contain a gender affirming care exclusion, the total number and amount of
23 denied claims, the number of enrollees in the CHI plan, and the exemplar language for
24 the exclusions may be sealed when (1) BCBSIL never designated the information as
25
26

1 confidential; and (2) there is no showing that the general, de-identified information is
2 proprietary.

3 DATED: June 24, 2022.

4 SIRIANNI YOUTZ
5 SPOONEMORE HAMBURGER PLLC

6 /s/ Eleanor Hamburger

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14 LAMBDA LEGAL DEFENSE AND
15 EDUCATION FUND, INC.

16 /s/ Omar Gonzalez-Pagan

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The Honorable Robert J. Bryan

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[PROPOSED]
ORDER ON THE PARTIES' MOTIONS
TO SEAL/REDACT DOCUMENTS

**Note on Motion Calendar:
June 24, 2022**

THIS MATTER comes before the below-signed Judge of the above-entitled Court upon Defendant BCBSIL's Motion to Seal Motion to Compel Briefing (Dkt. No. 55) and Plaintiffs' placeholder Motions to Seal/Redact (Dkt. Nos. 61, 64). The Court, having considered the Motions, each parties' responsive and reply briefing, 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) and Plaintiffs' placeholder Motion to Seal/Redact contained within Dkt. No. 61 are DENIED. Plaintiffs' placeholder Motion to Seal/Redact (Dkt. No. 64) is GRANTED in part. The following documents shall remain unsealed or shall be filed/refiled in the record in unredacted and unsealed form:

- 1 • Plaintiffs’ Motion to Compel Discovery (Dkt. No. 52);
- 2 • Declaration of Eleanor Hamburger in Support of Plaintiff’s Motion to
- 3 Compel (Dkt. No. 53);
- 4 • BCBSIL’s Response to Plaintiffs’ Motion to Compel (Dkt. No. 56);
- 5 • Declaration of Gwendolyn C. Payton in Support of BCBSIL’s Response to
- 6 Plaintiffs’ Motion to Compel (Dkt. No. 57);
- 7 • Exhibit 1 to the Declaration of Eleanor Hamburger in support of Plaintiffs’
- 8 Response to BCBSIL’s Motion to Seal Plaintiffs’ Motion to Compel (Dkt.
- 9 No. 62-1).

10 The following documents shall remain sealed, and BCBSIL is directed to confer
11 with Plaintiffs’ counsel and to submit an appropriately redacted version of the
12 documents:

- 13 • Exhibits 17 and 18 to the Supplemental Declaration of Eleanor Hamburger
- 14 in Support of Plaintiffs’ Reply briefing regarding Plaintiffs’ Motion to
- 15 Compel (Dkt. Nos. 66-1, 66-2).

16 DATED this _____ day of June, 2022.

17
18 _____
19 Robert J. Bryan
20 United States District Judge

1 Presented by:

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4 /s/ Eleanor Hamburger

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25 *Attorneys for Plaintiffs*

From: WAWDdb_COOPFilings
Sent: Friday, June 24, 2022 12:40 PM
To: WAWDml_INTKTAC
Subject: FW: Scheduled Outage E-filing in C.P. v. BCBSIL, Case No. 3:20-cv-06145-RJB - PLAINTIFFS' REPLY RE: PLACEHOLDER MOTIONS TO SEAL PURSUANT TO PROTECTIVE ORDER (Dkt. No. 25)
Attachments: Pls' Reply re Mot to Seal-062422 final.pdf; Prop Order Denying Motions to Seal-062422 final.pdf
Categories:

From: Theresa Redfern <theresa@sylaw.com>
Sent: Friday, June 24, 2022 12:38 PM
To: WAWDdb_COOPFilings <filing@wawd.uscourts.gov>
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Subject: Scheduled Outage E-filing in C.P. v. BCBSIL, Case No. 3:20-cv-06145-RJB - PLAINTIFFS' REPLY RE: PLACEHOLDER MOTIONS TO SEAL PURSUANT TO PROTECTIVE ORDER (Dkt. No. 25)

CAUTION - EXTERNAL:

Dear Clerk,

Due to the current CM/ECF Scheduled Outage/Unavailability, attached for e-filing today please find:

- 1) PLAINTIFFS' REPLY RE: PLACEHOLDER MOTIONS TO SEAL PURSUANT TO PROTECTIVE ORDER (Dkt. No. 25), and
- 2) [PROPOSED] ORDER ON THE PARTIES' MOTIONS TO SEAL/REDACT DOCUMENTS.

Please let me know if you have any questions. Thank you for your assistance.

Eleanor Hamburger

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Sent by Theresa Redfern, Legal Secretary, theresa@sylaw.com

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