

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
PLAINTIFF CLASS'S RESPONSE TO
ORDER TO SHOW CAUSE (DKT. No. 166)

**Note on Motion Calendar:
March 31, 2023**

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

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

2. Attached as **Exhibit A** is a true and correct copy of excerpts of the Verbatim Report of Proceedings before the Honorable Robert J. Bryan, United States District Judge in this matter on March 9, 2023, at 9:30 a.m.

1 DATED this 31st day of March, 2023 at Seattle, Washington.

2
3 /s/Eleanor Hamburger

4 Eleanor Hamburger (WSBA #26478)
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10 *Attorneys for Plaintiffs*
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Exhibit A

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,	)	3:20-cv-06145-RJB
	)	
Plaintiffs,	)	Tacoma, Washington
	)	
v.	)	March 9, 2023
	)	
BLUE CROSS BLUE SHIELD OF	)	Motion Hearing
ILLINOIS,	)	
	)	9:30 a.m.
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: ELEANOR HAMBURGER
Sirianni Youtz Spoonemore
Hamburger
3101 Western Avenue
Suite 350
Seattle, Washington

For the Defendant: GWENDOLYN C. PAYTON
Kilpatrick Townsend & Stockton
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Seattle, Washington

Proceedings stenographically reported and transcribed
with computer-aided technology

1 down and it answers this question.

2 Now, in *Wit* the Ninth Circuit told us that reprocessing,
3 which is what the plans are asking you for -- to send these
4 claims back and have them readjudicated through Blue Cross
5 Blue Shield of Illinois, and then paid by Blue Cross Blue
6 Shield of Illinois -- is not a remedy that is allowed under
7 Rule 23, period.

8 We already know that it is not allowed under Rule
9 23(1)(b)(1) and (b)(2), which is your certification because
10 that is money. In addition, *Wit* says you can't do that
11 because it violates some of the basic premise of Rule 23,
12 which is Your Honor has to award injunctive relief that is
13 final. You have to end the dispute in this court.

14 What you cannot do is issue an injunctive relief that
15 says, go out at some later point, and maybe or maybe not get
16 the relief that you want here. As Your Honor has said, you
17 cannot issue final relief here because you don't know, for
18 example, whether there is a RFRA defense that may bar those
19 claims.

20 What this is essentially saying is you have to do a whole
21 bunch of adjudication in different courts in different places
22 about the issues that underlie the violations that these
23 plaintiffs have been harmed with.

24 We are going with a situation where we have to help this
25 Court issue final injunctive relief that makes the plaintiffs

1 That is even more important in a case with a TPA, which
2 Your Honor has, because the TPA is bound by law to stay
3 within the confines of ERISA and never go outside of ERISA.

4 What the Court said when doing that analysis under ERISA
5 was that ERISA is very clear that you can have only
6 injunctive relief that is not extraordinary, that you would
7 otherwise expect under the statute. There is nothing that
8 would put a party on notice that reprocessing was a remedy
9 that was available under ERISA. That is an additional reason
10 in -- on top of it, it is not final and it is money.

11 What Ms. Hamburger says is that, wait, we didn't make a
12 benefits claim under ERISA to get our money for the claim.
13 What we said is this is a 1557 claim, so therefore, we can
14 bypass all of that rationale against reprocessing and *Wit*.
15 That fails.

16 First of all, there is no way the Ninth Circuit wanted to
17 create some hypertechnical carve out from the no-reprocessing
18 mandate they gave us. We know that even if they did want to
19 do the analysis under 1557, it is exactly the same as in
20 ERISA.

21 First, the only reason that -- 1557 is in ERISA because it
22 incorporates Title IX through Section 1557. It is part of
23 the ERISA body of law.

24 Secondly, exactly the same analysis under Section 1557 in
25 Title IX that the type of remedy that is available under

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ Angela Nicolavo

ANGELA NICOLAVO
COURT REPORTER