

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 on his own behalf
and on behalf of similarly situated others; and
PATRICIA PRITCHARD,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,

Defendant.

No. 3:20-cv-06145-RJB

PLAINTIFFS' MOTION FOR LEAVE
TO FILE A SECOND AMENDED
COMPLAINT AND TO ADD PARTIES
AS ADDITIONAL CLASS
REPRESENTATIVES

**Note on Motion Calendar:
October 6, 2023**

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I. INTRODUCTION

2 Pursuant to Federal Rules of Civil Procedure 15(a)(2), 16(b), and 21, and LCR 15,
3 Plaintiff Class respectfully moves for leave to file a Second Amended Complaint, attached in
4 redline format as *Appendix A*, and to add class members Emmett Jones and S.L., by and through
5 her parents, S.R. and R.L., as class representatives.

6 Following certification of the class and entry of classwide summary judgment, Plaintiff
7 Class moved for declaratory and permanent injunctive relief (Dkt. 153), seeking equitable
8 remedies for the illegal discrimination based on sex inflicted by Blue Cross Blue Shield of Illinois
9 (“BCBSIL”) on Class members, including Jones and S.L., when it administered categorical
10 exclusions of gender-affirming care (the “Exclusions”). Specifically, Plaintiff Class seeks: (1) a
11 declaration that BCBSIL engaged in illegal sex discrimination by administering the Exclusions;
12 (2) prospective permanent injunctive relief; (3) equitable tolling of the timelines for submitting
13 claims and appeals of adverse determinations in the BCBSIL-administered health plans; (4)
14 processing of all pre-service requests and post-service claims for gender-affirming denied care
15 denied solely based on the Exclusions during the class period; and (5) class-wide court-approved
16 notice at the expense of BCBSIL.¹

17 While Plaintiffs’ Motion for Relief was pending, Ms. Pritchard and C.P. left the CHI plan,
18 following Ms. Pritchard’s attainment of new employment. Hamburger Decl., ¶¶2-3. However,
19 “a plaintiff must demonstrate standing separately for each form of relief sought.” *Friends of the*
20 *Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *see also*
21 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). While C.P. maintains standing to
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24 ¹ Plaintiffs also seek nominal individual damages for the discrimination suffered by Pattie
25 Pritchard and C.P. Class counsel is also entitled to attorney’s fees and litigation costs under the
26 ACA, at BCBSIL’s expense. 42 U.S.C. §18116(a); 42 U.S.C. §1988. Class counsel will move
for award of attorney’s fees, litigation costs and a case contribution award for the named plaintiffs
after a final judgment is issued.

1 obtain most of the relief the Class has requested, it is arguable whether he maintains standing to
2 seek classwide prospective injunctive relief. Justice and judicial economy support the addition
3 of class representatives Jones and S.L. who have such standing.

4 For good cause and in the interests of justice, and because Defendants will suffer no
5 prejudice, the Court should grant this Motion. and permit Plaintiffs to file a Second Amended
6 Complaint adding Jones and S.L. as parties and appoint them as additional class representatives.

7 II. FACTUAL BACKGROUND

8 A. Procedural History.

9 This case was filed on November 23, 2020. Dkt. 1. The Court denied BCBSIL's motion
10 to dismiss on May 4, 2021. Dkt. 23. With the Court's permission, Plaintiffs filed their Amended
11 Complaint, including class allegations, on November 2, 2021. Dkt. 38.

12 Discovery closed on August 12, 2022. Dkt. 73. Plaintiffs moved for class certification,
13 and the parties each moved for summary judgment. Dkt. 78, 87, and 96. The Court granted class
14 certification on November 9, 2022 and the order was amended on December 12, 2022. Dkt. 113,
15 143. The Court further granted Plaintiffs' motion for summary judgment and denied Defendant's
16 cross-motion on December 21, 2022. Dkt. 148.

17 On February 9, 2023, Plaintiffs filed their Motion for Relief and Defendant moved to
18 decertify the class. Dkt. 153 and 156. After oral argument, the Court issued an Order to Show
19 Cause asking the parties why the case should not be stayed pending a decision by the Ninth
20 Circuit regarding the petition for *en banc* review in *Wit v. United Behav. Health*. Dkt. 166. On
21 April 17, 2023, the Court entered a stay and ordered the parties to notify the Court within 10 days
22 of the decision in *Wit* or file a status report no later than September 5, 2023. Dkt. 171.

23 On September 1, 2023, following a new panel decision in *Wit*, 58 F.4th 1080 (9th Cir.
24 2023), the parties filed a joint response to the Stay Order requesting that Plaintiffs' Motion for
25 Relief (Dkt. 153) and Defendant's motion to decertify (Dkt. 156) be renoted. Dkt. 171. On
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1 September 6, 2023, the Court ordered the motions renoted to October 20, 2023, and that
2 supplemental briefing be filed by September 22, 2023. Dkt. 173.

3 **B. Proposed Amended Complaint.**

4 During the pendency of Plaintiffs' Motion for Relief (Dkt. 153), Ms. Pritchard obtained
5 new employment and she and C.P. left the CHI Plan (Hamburger Decl., ¶¶2-3), making
6 amendment advisable for the provision of prospective injunctive relief. The proposed Second
7 Amended Complaint adds no new claims. It only adds allegations for two new named
8 plaintiffs—Emmett Jones and S.L., by and through her parents—sufficient to show their
9 suitability as additional class representatives and standing to seek prospective permanent
10 injunctive relief on behalf of the Class. Class counsel met and conferred with BCBSIL's counsel,
11 and BCBSIL opposes the amendment. Hamburger Decl., ¶¶4-5.

12 Emmett Jones

13 Emmett Jones is enrolled in health coverage in the CHI Plan through his wife's employer,
14 CHI. Jones Decl., ¶2. His coverage is thus administered by BCBSIL and is subject to the same
15 Exclusion as was C.P. *Id.*, ¶3. Jones has been diagnosed with gender dysphoria. *Id.*, ¶4. As
16 part of the treatment for his gender dysphoria, Jones's health care providers recommended that
17 he receive chest surgery and reconstruction as medically necessary. *Id.*, ¶5. Jones obtained chest
18 surgery on May 25, 2023, which he paid for out-of-pocket. *Id.*, ¶6. On June 5, 2023, Jones
19 submitted to BCBSIL a claim for reimbursement for the surgical procedure and associated
20 services, which BCBSIL denied on June 27, 2023. *Id.*, ¶¶7-8.

21 S.L.

22 S.L. is a 12-year-old transgender girl, who has been diagnosed with gender dysphoria and
23 precocious puberty. S.R. Decl., ¶2. She is enrolled in a self-funded health benefit plan
24 administered by BCBSIL offered through a non-religious employer. *Id.*, ¶4. When she enrolled,
25 her healthcare provider obtained pre-approval for her treatment with puberty blockers, which are
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1 medically necessary to treat both conditions. *Id.*, ¶¶7-8, *Exh. 1*. Despite pre-authorization,
 2 BCBSIL denied coverage for the puberty blockers, pursuant to the Exclusion. *Id.*, ¶9, *Exh. 2*.
 3 On March 17, 2023, S.L.’s mother appealed the denial, and again BCBSIL denied all coverage
 4 for the treatment because BCBSIL considered the treatment “related to” gender dysphoria. *Id.*,
 5 ¶¶10-11, *Exh. 3*. S.L. will likely need a new puberty blocker this fall as well as hormone
 6 treatment in the future. *Id.*, ¶14.

7 III. ARGUMENT

8 A. Addition of Class Representatives Is Appropriate.

9 This case is unusual in that C.P. continues to be an adequate class representative as to the
 10 sole claim in this case but now may not be adequate as to *all forms of requested relief*. To be
 11 clear, C.P. has standing to bring the Section 1557 claim and seek, on behalf of the Class: (1) a
 12 declaration that BCBSIL engaged in illegal sex discrimination by administering the Exclusions;
 13 (2) equitable tolling of the timelines for submitting claims and appeals of adverse determinations
 14 in the BCBSIL administered health plans; (3) processing of all claims for gender-affirming care
 15 that were denied solely based on the Exclusions, either via pre-service determinations, or post-
 16 service claims adjudications, during the class period; and (4) class-wide court-approved notice at
 17 the expense of BCBSIL. However, “a plaintiff must demonstrate standing separately for each
 18 form of relief sought,” *Laidlaw Env’t Servs.*, 528 U.S. at 185, and the Plaintiff Class seeks
 19 prospective permanent injunctive relief. Accordingly, the amendment of class members as class
 20 representatives is required to ensure standing for prospective injunctive relief. *See Hodgers-*
 21 *Durgin v. de la Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999).

22 To be sure, on appeal, “a class representative may pursue the live claims of a properly
 23 certified class—without the need to remand for substitution of a new representative—even after
 24 his own claims become moot, provided that several requirements are met.” *Johnson v. City of*
 25 *Grants Pass*, 72 F.4th 868, 884 (9th Cir. 2023). Such requirements are that: (1) the class be
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1 properly certified, or the representative be appealing denial of class certification; (2) the class
2 representative is a member of the class with standing to sue at the time certification is granted or
3 denied; (3) the unnamed class members still have a live interest in the matter throughout the
4 duration of the litigation; and (4) the court is satisfied that the named representative will
5 adequately pursue the interests of the class even though their own interest has expired. *Id.*, at
6 884, n.18 (cleaned up). Each criteria are met here.

7 Still, adding new class representatives will cure any question as to Plaintiffs' standing to
8 seek prospective injunctive relief. "[W]hen a question exists regarding the suitability of existing
9 class representatives, it is appropriate to permit the intervention or substitution of named
10 plaintiffs." *Butler v. Suffolk Cnty.*, 2023 U.S. Dist. LEXIS 138959, at *4 (E.D.N.Y. Aug. 9,
11 2023); *see also In re Lowe's Cos. Fair Labor Standards Act (FLSA) & Wage & Hour Litig.*, 2021
12 U.S. Dist. LEXIS 199148 at *8-9 (W.D.N.C. Oct. 7, 2021). "This is so because a class has a
13 legal status separate from the named plaintiff; therefore, should the class representative become
14 inadequate, substitution of an adequate representative is appropriate to protect the interests of the
15 class." *Butler*, 2023 U.S. Dist. LEXIS 138959, at *5; *see also Sosna v. Iowa*, 419 U.S. 393, 399
16 (1975); *Velazquez v. GMAC Mortg. Corp.*, 2009 U.S. Dist. LEXIS 88574 at *10 (C.D. Cal.
17 Sept. 10, 2009); Newberg on Class Actions §2:17 (5th ed. 2014) ("Once a class complaint is
18 filed, but certainly following certification, Rule 23 is designed to assure that the rights of absent
19 class members are not prejudiced by the voluntary actions of the representative plaintiff.");
20 Manual for Complex Litigation (Fourth) §21.26 (2004) (Class representative should be
21 substituted when her "individual claim has been mooted or otherwise significantly altered.");
22 "[W]hen a certified or putative class is left without adequate representation, courts hold that
23 adding a new class representative is appropriate, even required, to protect class interests." *In re*
24 *GM LLC Ignition Switch Litig.*, 2017 U.S. Dist. LEXIS 189550, at *340 (S.D.N.Y. Nov. 15,
25 2017). Indeed, "Courts regularly allow replacement of the named plaintiff after class
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1 certification.” *Velazquez*, 2009 U.S. Dist. LEXIS 88574 at *9; *see also In re Lowe’s*, 2021 U.S.
2 Dist. LEXIS 199148, at *8.

3 Here, Jones and S.L. are members of the certified Class with standing to seek prospective
4 injunctive relief. Both are enrolled in self-funded health plans administered by BCBSIL (Jones
5 in the CHI Plan, and S.L. in another plan); both were denied coverage based on BCBSIL’s
6 administration of the Exclusion in their plans; and both are likely to seek such coverage in the
7 future. Jones Decl., ¶¶2–4, 7, 10–11; S.R. Decl., ¶¶4, 9–12. Moreover, C.P. would remain as a
8 named plaintiff and class representative. No new discovery or litigation of liability is necessary
9 as Jones and S.L. are undeniably members of the Class and the Court has already determined that
10 BCBSIL cannot administer the Exclusions *as a matter of law*.

11 **B. There is Good Cause to Amend.**

12 “Once the district court has issued a pretrial scheduling order pursuant to Rule 16
13 establishing the time for any amendment to the pleadings, a motion seeking to amend pleadings
14 is governed first by Rule 16(b), and only secondarily by Rule 15(a).” *Pizana v. Sanmedica Int’l*
15 *LLC*, 2022 U.S. Dist. LEXIS 76989, at *10 (E.D. Cal. Apr. 26, 2022). “Under Rule 16, the court
16 will only modify a scheduling order upon a showing of “good cause” by the moving party.” *Id.*
17 at *10–11; *see also* Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily
18 considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations,*
19 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “[T]he focus of the inquiry is upon the moving party’s
20 reasons for seeking modification.” *Id.*

21 “It is firmly established that where a class action exists, members of the class may ... be
22 substituted as named plaintiffs in order to keep the action alive after the claims of the original
23 named plaintiffs are rendered moot.” *Graves v. Walton Cty. Bd. of Educ.*, 686 F.2d 1135, 1138
24 (5th Cir. 1982). While C.P.’s claims are not moot, his ability to seek one form of relief has been
25 potentially impaired. *See Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999).

1 As such, “courts have [] expressed a preference for plaintiff’s counsel to locate a new class
2 representative once the original class representative can no longer carry on their duties, rather
3 than dismissing or decertifying a class.” *Fishon v. Premier Nutrition Corp.*, 2022 U.S. Dist.
4 LEXIS 58655, at *5 (N.D. Cal. Mar. 30, 2022). Indeed such addition or substitution of named
5 plaintiffs is “a routine feature of class actions.” *In re Brewer*, 863 F.3d 861, 876 (D.C. Cir. 2017).
6 In sum, the addition of plaintiffs and class representatives here is appropriate to ensure the Class
7 is able to obtain all forms of relief to which it is entitled.

8 Regarding “noncompliance” with the Rule 16 deadlines, such noncompliance is “because
9 of the development of matters which could not have been reasonably foreseen or anticipated at
10 the time of the Rule 16 scheduling conference.” *Pizana*, 2022 U.S. Dist. LEXIS 76989, at *13.
11 The initial deadline to amend pleadings was April 30, 2021, Dkt. 15, which was over two years
12 prior to Ms. Pritchard securing new employment. Thus, the facts giving rise to the requested
13 amendment were not knowable by the deadline to amend pleadings. Amendment of the pleadings
14 within the Rule 16 deadline was impossible.

15 Plaintiffs and their counsel have been diligent in seeking the requested amendment. Ms.
16 Pritchard and C.P. left the CHI Plan on August 31, 2023, while this case was stayed. Hamburger
17 Decl., ¶2. In the ensuing few weeks, Class counsel identified and secured two additional
18 prospective class representatives and moved to amend the complaint and add additional class
19 representatives to ensure the Class’s ability to obtain prospective injunctive relief. This Court
20 and other courts have found such a speedy response to be diligent. *See, e.g., Kirby v.*
21 *McMenamins Inc.*, 2023 U.S. Dist. LEXIS 125674, at *11 (W.D. Wash. July 19, 2023) (finding
22 plaintiff exercised diligence in bringing motion less than two months after obtaining the class
23 contact list and less than a month after the additional plaintiffs requested to join the case and
24 retained counsel); *Pizana*, 2022 U.S. Dist. LEXIS 76989, at *22 (finding plaintiff acted diligently
25 in filing motion to amend a few months after the depositions commenced and a few weeks after
26 being retained by the newly proposed plaintiffs); *Pitre v. Wal-Mart Stores, Inc.*, 2019 U.S. Dist.

1 LEXIS 11590, at *8-9 (C.D. Cal. Jan. 17, 2019) (finding good cause for leave to amend to add
2 class representatives after learning in August that named plaintiff had health issues and moving
3 to add new plaintiffs in October).²

4 Given the posture of this case, there is good cause for the amendment. This Court
5 certified the Class and granted summary judgment over nine months ago. Since then, Plaintiffs’
6 Motion for Relief (Dkt. 153) has been pending and the standing of the named Plaintiff to seek
7 one of the requested forms of relief has come into question due to unforeseen circumstances,
8 which Plaintiffs and their counsel have diligently sought to address to protect the Class’s rights.

9 **C. The Interests of Justice Favor of Granting Leave to Amend the Pleadings.**

10 Federal Rule of Civil Procedure 15(a)(2) provides that a court “should freely give leave”
11 to amend a pleading before trial “when justice so requires.” “This policy is to be applied with
12 extreme liberality.” *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1102 (9th Cir. 2018) (quotes
13 omitted). “This liberality in granting leave to amend is not dependent on whether the amendment
14 will add ... parties.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). Rather,
15 the district court’s discretion to grant leave to amend “should be guided by the underlying
16 purpose of Rule 15(a) ... which was to facilitate decisions on the merits, rather than on
17 technicalities or pleadings.” *In re Morris*, 363 F.3d 891, 894 (9th Cir. 2004) (quotes omitted).
18 “Leave to amend should be granted generously, after considering bad faith, undue delay,
19 prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously
20 amended the complaint.” *Bolden-Hardge v. Off. of California State Controller*, 63 F.4th 1215,
21 1221 (9th Cir. 2023) (cleaned up). “The party opposing amendment bears the burden to show
22 why it should not be granted.” *Kirby*, 2023 U.S. Dist. LEXIS 125674, at *12.

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25 ² “When substitution is required, the court should allow ‘reasonable time’ for the substitution
26 of a new class representative.” *Ga. Advocacy Office v. Jackson*, 2020 U.S. Dist. LEXIS 68261,
at *7 (N.D. Ga. Jan. 7, 2020).

1 Pursuant to Rule 21, “[o]n motion or on its own, the court may at any time, on just terms,
2 add or drop a party.” Fed. R. Civ. P. 21. “Courts consider requests to add or withdraw a party
3 pursuant to Rule 21 under the same standard that applies to requests to amend a complaint under
4 Rule 15.” *In re Snap Inc. Sec. Litig.*, 394 F. Supp. 3d 1156, 1157 (C.D. Cal. 2019).

5 None of the circumstances that might weigh against granting leave to amend are present.

6 **First**, there is no prejudice to BCBSIL. “‘Undue prejudice’ means substantial prejudice
7 or substantial negative effect.” *SAES Getters S.p.A. v. Aeronex, Inc.*, 219 F. Supp. 2d 1081, 1086
8 (S.D. Cal. 2002). “[T]he Ninth Circuit has found such substantial prejudice where the claims
9 sought to be added would have greatly altered the nature of the litigation and would have required
10 defendants to have undertaken, at a late hour, an entirely new course of defense.” *Id.* (cleaned
11 up). Here, the Court has already certified the Class and determined as a matter of law that
12 BCBSIL cannot administer the Exclusions. And, as noted in *Kirby*, “[t]he proposed addition of
13 named plaintiffs does not add any new claims to the matter or alter the putative class
14 membership.” 2023 U.S. Dist. LEXIS 125674, at *14. In fact, the proposed addition of the two
15 new class representatives does not in any way affect the purely legal question of whether
16 BCBSIL, as a TPA, can administer and apply the Exclusions. Adding Jones and S.L. as named
17 plaintiffs would not “require any more discovery than if [they] were to remain as unnamed
18 members of the [] Class.” *See Hogan v. InStore Grp., LLC*, 512 F. Supp. 3d 157, 170 (D. Mass.
19 2021). And BCBSIL’s “liability does not change based on whether [Jones and S.L.] [are] []
20 named plaintiff[s] or simply [] class member[s].” *Id.* The only issues left in this case are the
21 entry of relief and BCBSIL’s eleventh hour attempt to decertify the Class, neither of which are
22 affected by the addition of Jones and S.L. as named plaintiffs and class representatives.

23 **Second**, as noted in Section III.B, *supra*, Plaintiffs did not delay in making this
24 amendment. Here, the amendment is sought less than two weeks after the Court lifted its stay of
25 proceedings on September 6, 2023; three weeks after C.P. left the CHI Plan on August 31, 2023;

1 and about one month after Ms. Pritchard provided notice to CHI of her intent to leave her position
2 on August 16, 2023.

3 **Third**, there is no bad faith in seeking the amendment. Plaintiffs so move to protect the
4 Class's ability to secure all relief to which they are entitled. There is no evidence of "wrongful
5 motive" by plaintiffs in seeking to amend. *DCD Programs*, 833 F.2d at 187.

6 **Fourth**, amendment is not futile. "A proposed amendment is futile only if no set of facts
7 can be proved under the amendment that would constitute a valid claim." *Barrett v. Apple Inc.*,
8 523 F. Supp. 3d 1132, 1149 (N.D. Cal. 2021); *see also* Dkt. 37, at 3 (quoting *Barahona v. Union*
9 *Pac. R.R. Co.*, 881 F.3d 1122, 1134 (9th Cir. 2018)). Both proposed new plaintiffs are not only
10 class members, but also are currently enrolled within discriminatory plans administered by
11 BCBSIL (one being the CHI Plan). The purpose of the amendment is to ensure the Class may
12 obtain prospective injunctive relief and both proposed additional plaintiffs have such standing.
13 Should Defendant argue that the amendment affects class certification, that issue should be more
14 litigated in the context of the pending motion to decertify the class (however futile that may be),
15 rather than this motion for leave to amend.

16 **Fifth**, Plaintiffs seek leave to file a second amended complaint. Their "proposed
17 amendments are unrelated to [their] ... previous amendments, and there has been no history of
18 repeated failures to cure pleading deficiencies in this case." *Pizana*, 2022 U.S. Dist. LEXIS
19 76989, at *26. "Thus, consideration of this factor does not weigh against granting leave to
20 amend." *Id.*

21 **Finally**, Rule 23 was amended "in 1966 to enable structural reform and broad remedial
22 relief" and "was designed to enhance civil rights enforcement." Suzette M. Malveaux, *The*
23 *Modern Class Action Rule: Its Civil Rights Roots and Relevance Today*, 66 U. KAN. L. REV. 325,
24 327 (2017). The addition of the two new proposed class representatives achieves those goals in
25 this civil rights case, as the amendment ensures Class's ability to obtain "structural reform and
26 broad remedial relief."

1 **D. Emmett Jones and S.L. Are Appropriate Additional Class Representatives.**

2 Proposed plaintiffs Emmett Jones and S.L. are appropriate class representatives. Their
 3 claims are co-extensive with those of the certified Class. Like all class members, Jones and S.L.
 4 “(1) have been, are, or will be participants or beneficiaries in an ERISA self-funded ‘group health
 5 plan’ (as defined in 29 U.S.C. §1167(1)) administered by Blue Cross Blue Shield of Illinois
 6 during the Class Period and that contains a categorical exclusion of some or all Gender-Affirming
 7 Health Care services; and (2) were, are, or will be denied pre-authorization or coverage of
 8 treatment with excluded Gender Affirming Health Care services.” Dkt. 143, at 2.

9 Their claims are also typical of the Class. “The test of typicality is whether other members
 10 have the same or similar injury, whether the action is based on conduct which is not unique to
 11 the named plaintiffs, and whether other class members have been injured by the same course of
 12 conduct.” *A. B. v. Hawaii State Dep’t of Educ.*, 30 F.4th 828, 839 (9th Cir. 2022). Here, their
 13 “injury is the same or is similar to other class members.” Dkt. 113, at 12. Like C.P., they “assert[]
 14 that Blue Cross denied [them] access to coverage for needed gender-affirming care as do all other
 15 members of the putative class.” *Id.* And, “[l]ike the class, [they] contend[] that Blue Cross
 16 impermissibly discriminated against [them], contrary to the ACA, when it administered and/or
 17 enforced exclusions for gender affirming care in self-funded ERISA healthcare plans.” *Id. See*
 18 *also, e.g., Tech. Access Found. Health Benefit Plan v. Grp. Health Coop.*, 2012 U.S. Dist. LEXIS
 19 149610, at *12 (W.D. Wash. Oct. 17, 2012).

20 To the extent BCBSIL opposes Jones’s and S.L.’s suitability to serve as class
 21 representatives based on variations in plan language, this Court has already rejected such
 22 arguments. Dkt. 113, at 12 (“The variation in plan language and the possibility of the application
 23 of various defenses does not exclude C.P.’s claim as typical of the class.”). While Jones is
 24 enrolled in the same CHI Plan in which C.P. was enrolled, that S.L. is enrolled in a different plan
 25 is of no consequence. All that is required is that class members’ injuries result from the similar
 26 course of conduct by the defendant, regardless of varying fact patterns for each individual class

1 member. *See Kavu, Inc. v. Omnipak Corp.*, 246 F.R.D. 642, 648 (W.D. Wash. 2007). Here, “Blue
2 Cross administered the exclusions for gender affirming care (regardless of the particular plan’s
3 coverage) consistently.” Dkt. 113, at 12.

4 In addition, like C.P., both Jones and S.L., by and through her parents, will fairly and
5 adequately represent the class. They are committed to the vigorous prosecution of this suit and
6 views their interests as coextensive with the Class members, both known and unknown. Their
7 claims and interests do not conflict with any interests of the Class. *See generally*, Jones Decl.,
8 ¶¶14-15; S.R. Decl., ¶¶18-19. Indeed, Jones, S.L., C.P., and the Class Members all have a
9 common interest in seeing the ACA’s non-discrimination requirements enforced and securing
10 nondiscriminatory health coverage. Jones and S.L. are well-situated to seek the relief sought by
11 the proposed class. As current enrollees, they have indisputable standing to seek prospective
12 injunctive relief.

13 IV. CONCLUSION

14 For the foregoing reasons, the Court should order the following:

- 15 1. Plaintiffs’ Motion for Leave to File an Amended Complaint be granted, and
16 Plaintiffs be directed to file the Second Amended Complaint, attached hereto as *Appendix A*; and
- 17 2. Plaintiffs’ Motion to Add Parties as Class Representatives be granted, and Emmett
18 Jones and S.L., by and through her parents, S.R. and R.L., are hereby appointed as Class
19 Representatives in addition to C.P., by and through his parents, Pattie Pritchard and Nolle
20 Pritchard.

1 DATED: September 21, 2023.

2 *I certify that the foregoing contains 4,140 words,*
3 *in compliance with the Local Civil Rules.*

4 SIRIANNI YOUTZ
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APPENDIX A

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; S.L. by and through her parents, S.R. and R.L.; EMMETT JONES, each individually and on behalf of similarly situated others; and PATRICIA PRITCHARD, individually,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,
Defendant.

No. 3:20-cv-06145-RJB

**SECOND AMENDED COMPLAINT
(CLASS ACTION)**

I. INTRODUCTION

1. The Affordable Care Act (“ACA”) prohibits discrimination on the basis of sex in health care. This includes the administration, application, and enforcement of any exclusions of gender affirming care by health insurance companies and claims administrators that receive federal financial assistance and participate in health care insurance marketplaces established under the ACA.

2. As a health insurance company and claims administrator, Blue Cross Blue Shield of Illinois (“BCBSIL”) participates in the health care insurance marketplaces and administers dozens of employer-provided benefit plans across the United States. In

1 doing so, and notwithstanding its legal obligation to not discriminate on the basis of sex
2 pursuant to Section 1557 of the ACA, BCBSIL administers and enforces plan exclusions
3 of gender affirming care that deprive transgender people of essential, and sometimes
4 lifesaving, health care. These exclusions, like the one applied to Plaintiffs, facially, and
5 categorically, exclude coverage for gender affirming health care that transgender people
6 may require, including but not limited to counseling, hormone replacement therapy, and
7 surgical care.

8 3. Plaintiffs are a fifteen-year-old transgender boy (C.P.), by and through his
9 parents; and his C.P.'s mother (Patricia Pritchard); a twelve-year-old transgender girl
10 (S.L.), by and through her parents; and a transgender man (Emmett Jones), all of whom
11 are being discriminated against on the basis of sex because Plaintiff C.P. is C.P., S.L., and
12 Emmett Jones are transgender.

13 4. As part of the compensation for her employment, Plaintiff Patricia
14 Pritchard receives health care coverage through the Catholic Health Initiatives Medical
15 Plan ("Plan"), which is administered by BCBSIL. Plaintiff C.P. is enrolled in such Plan as
16 a dependent of Ms. Pritchard.

17 5. Emmett Jones is enrolled in the Plan administered by BCBSIL by reason of
18 his wife's employment.

19 4.6. S.L. is enrolled in a different employer-sponsored health plan administered
20 by BCBSIL by virtue of her father's employment.

21 5.7. BCBSIL administers the Plan and other similar plans according to its terms
22 and in a manner that deprives transgender enrollees of coverage for medically necessary
23 gender affirming care, *i.e.* medically necessary treatment of gender dysphoria.

24 6.8. Specifically, at the time BCBSIL denied coverage for C.P.'s treatment, the
25 terms of the Plan stated:

Transgender Reassignment Surgery

Not Covered:

Benefits shall not be provided for treatment, drugs, medicines, therapy, counseling services and supplies for, or leading to, gender reassignment surgery.

App. A, p. 61 (emphasis in original) (hereinafter referred to as the “Exclusion”). The same or similar exclusion exists in the plans for Jones, S.L., and other class members.

7.9. The sweeping exclusion contained within the Plan, and those likely contained within other plans administered by BCBSIL, denies coverage for gender-affirming health care, including surgical care, and other health care provided in relation to a person’s transgender status and/or gender transition, if BCBSIL determines that the care is provided “for or leading to gender reassignment surgery.”

8.10. Such exclusions contravene the well-established medical consensus that gender affirming health care can be medically necessary and even life-saving. Other ~~Plan~~ plan enrollees who are not transgender do not face a categorical exclusion barring coverage for health care that is medically necessary for them based on their sex and receive coverage for the same care that is denied to transgender enrollees.

9.11. Plaintiffs have been denied coverage for medically necessary gender affirming health care because C.P., ~~is~~ S.L., and Emmett Jones are transgender, based on the Exclusion of gender-affirming health care in the Plan and other similar plans. Plaintiffs have been forced to incur financial hardship without the financial protection afforded by coverage through the Plan and other similar plans, like the one in which S.L. is enrolled. Plaintiffs have also suffered emotional distress, stigmatization, humiliation, and a loss of dignity because of ~~the Plan’s~~ their plans’ targeted discrimination against transgender enrollees, which wrongly deems their health care needs as unworthy of equal coverage.

1 18-22. Venue is proper under 28 U.S.C. § 1391(b)(2), because, *inter alia*, a
2 substantial part of the events giving rise to the claim occurred in Kitsap County.

3 19-23. The Court has personal jurisdiction over Defendant BCBSIL because by
4 agreeing to administer the Plan, which covers residents of the State of Washington,
5 BCBSIL has knowingly and deliberately engaged in significant activities within the State
6 of Washington and has created continuing obligations between itself and residents of ~~the~~
7 this forum.

8 **IV. FACTUAL BACKGROUND**

9 *Gender Dysphoria and Its Treatment*

10 20-24. Every individual's sex is multifaceted, and comprised of a number of
11 characteristics, including but not limited to chromosomal makeup, hormones, internal
12 and external reproductive organs, secondary sex characteristics, and most importantly,
13 gender identity.

14 21-25. Gender identity is a person's internal sense of their sex. It is an essential
15 element of human identity that everyone possesses, and a well-established concept in
16 medicine. Gender identity is innate, immutable, and has biological underpinnings.

17 22-26. For everyone, gender identity is the most important determinant of a
18 person's sex and a fundamental component of human identity.

19 23-27. A person's sex is generally assigned at birth based solely on a visual
20 assessment of external genitalia at the time of birth. External genitalia are only one of
21 several sex-related characteristics and are not always indicative of a person's sex.

22 24-28. For most people, these sex-related characteristics are all aligned, and the
23 visual assessment performed at birth serves as an accurate proxy for that person's
24 gender.

1 25-29. Where a person’s gender identity does not match that person’s sex
2 assigned at birth, however, gender identity is the critical determinant of that person’s
3 sex.

4 26-30. The ability to live in a manner consistent with one’s gender identity is vital
5 to the health and wellbeing of transgender people.

6 27-31. For transgender people, an incongruence between their gender identity
7 and sex assigned at birth can result in a feeling of clinically significant stress and
8 discomfort known as gender dysphoria.

9 28-32. Gender dysphoria is a serious medical condition recognized in the
10 American Psychiatric Association’s Diagnostic and Statistical Manual of Mental
11 Disorders, Fifth Edition (“DSM-5”); the World Health Organization’s International
12 Classification of Diseases, which is the diagnostic and coding compendia for medical
13 professionals; and by other leading medical and mental health professional groups,
14 including the American Medical Association (“AMA”) and the American Psychological
15 Association (“APA”). The criteria for diagnosing gender dysphoria are set forth in the
16 DSM-5 (302.85).

17 29-33. In addition to clinically significant distress, untreated gender dysphoria
18 can result in severe anxiety, depression, or even suicidality.

19 30-34. Untreated gender dysphoria often intensifies with time. The longer an
20 individual goes without or is denied adequate treatment for gender dysphoria, the
21 greater the risk of severe harms to the individual’s health.

22 31-35. Gender dysphoria can be treated in accordance with internationally
23 recognized Standards of Care formulated by the World Professional Association for
24 Transgender Health (“WPATH”). WPATH is an international, multidisciplinary,
25 professional association whose mission is to promote evidence-based health care
26

1 protocols for transgender people. WPATH publishes Standards of Care that are based
2 on the best available science and expert professional consensus, and which are widely
3 accepted as best practices for treating gender dysphoria.

4 32.36. Under the WPATH Standards of Care, medically necessary treatments
5 may include, among other things, “[h]ormone therapy” and “[s]urgery to change
6 primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or
7 internal genitalia, facial features, body contouring).”

8 33.37. The Standards of Care are recognized as authoritative by national medical
9 and behavioral health organizations such as the AMA and APA, which have both called
10 for an end to exclusions of gender-affirming care from health insurance and health
11 benefit plans.

12 34.38. The individualized steps that many transgender people take to live in a
13 manner consistent with their gender, rather than the sex they were assigned at birth, are
14 known as transitioning.

15 35.39. Transitioning is particular to the individual but typically includes social,
16 legal, and medical transition.

17 36.40. Social transition entails a transgender individual living in accordance with
18 their gender identity in all aspects of life. For example, social transition can include
19 wearing attire, following grooming practices, and using pronouns consistent with that
20 person’s gender identity. The steps a transgender person can take as part of their social
21 transition help align their gender identity with all aspects of everyday life.

22 37.41. Legal transition involves steps to formally align a transgender individual’s
23 legal identity with their gender identity, such as legally changing one’s name and
24 updating the name and gender marker on their driver’s license, birth certificate, and
25 other forms of identification.
26

1 38.42. Medical transition, a critical part of transitioning for many transgender
2 people, includes gender-affirming care that bring the sex-specific characteristics of a
3 transgender person’s body into alignment with their gender. Gender-affirming care can
4 involve counseling to obtain a diagnosis of gender dysphoria, hormone replacement
5 therapy, surgical care, or other medically necessary treatments for gender dysphoria.

6 39.43. Hormone replacement therapy involves taking hormones for the purpose
7 of bringing one’s secondary sex characteristics into typical alignment with one’s gender
8 identity. Secondary sex characteristics are bodily features not associated with external
9 and internal reproductive genitalia (primary sex characteristics). Secondary sex
10 characteristics include, for example, hair growth patterns, body fat distribution, and
11 muscle mass development. Hormone replacement therapy can have significant
12 masculinizing or feminizing effects and can assist in bringing a transgender individual’s
13 secondary sex characteristics into alignment with their true sex, as determined by their
14 gender identity, and therefore is medically necessary care for transgender people who
15 need it to treat their gender dysphoria.

16 40.44. Gender-affirming surgical care might be sought by a transgender person
17 to better align primary or secondary sex characteristics with their gender identity.
18 Surgical care can include, but is not limited to, hysterectomies, gonadectomies,
19 mammoplasties, mastectomies, orchiectomies, vaginoplasties, and phalloplasties. These
20 treatments are for the purpose of treating gender dysphoria.

21 41.45. These various components associated with transition—social, legal, and
22 medical transition—do not change an individual’s sex, as that is already established by
23 gender identity, but instead bring the individual’s appearance, legal identity, and sex-
24 related characteristics into greater alignment with the individual’s gender identity and
25 lived experience.

1 42.46. The consequences of untreated, or inadequately treated, gender dysphoria
2 are dire. Symptoms of untreated gender dysphoria include intense emotional suffering,
3 anxiety, depression, suicidality, and other attendant mental health issues. Untreated
4 gender dysphoria is associated with higher levels of stigmatization, discrimination, and
5 victimization, contributing to negative self-image and the inability to function effectively
6 in daily life. When transgender people are provided with access to appropriate and
7 individualized gender-affirming care in connection with treatment of gender dysphoria,
8 these symptoms can be alleviated and even prevented.

9 43.47. The AMA, APA, American Psychiatric Association, Endocrine Society,
10 American College of Obstetricians and Gynecologists, American Academy of Family
11 Physicians, and other major medical organizations have recognized that gender-
12 affirming care is medically necessary, safe, and effective treatment for gender
13 dysphoria—and that access to such treatment improves the health and well-being of
14 transgender people. Each of these groups has publicly opposed exclusions of coverage
15 of this treatment by private and public health care administrators and payors, like the
16 Exclusion at issue here.

17 44.48. WPATH has stated that, like hormone replacement therapy and other
18 gender-affirming treatments, the “medical procedures attendant to sex reassignment are
19 not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient,” but instead are
20 “medically necessary for the treatment of the diagnosed condition.” Nor are they
21 experimental, because “decades of both clinical research and medical research show that
22 they are essential to achieving well-being for the [transgender] patient.”

23 *BCBSIL’s Administration of Health Plans and Exclusions*

24 45.49. BCBSIL offers health care plans in the health care exchanges established
25 under the ACA.
26

1 46.50. BCBSIL also administers health benefits plans for employer groups of
2 various sizes across the United States, including for CHI.

3 47.51. Upon information and belief, the Plan administered by BCBSIL on behalf
4 of CHI alone has thousands of enrollees and beneficiaries.

5 48.52. Upon information and belief, other health benefit plans administered by
6 BCBSIL may contain exclusions denying coverage for medically necessary gender
7 affirming care, like the one described in paragraph 6 of this Amended Complaint, even
8 though the same treatments are covered for cisgender plan enrollees and beneficiaries.

9 49.53. In 2008, the AMA passed Resolution 122 recognizing gender dysphoria
10 (then known as gender identity disorder) as a “serious medical condition” which, “if left
11 untreated, can result in clinically significant psychological distress, dysfunction,
12 debilitating depression, and for some people without access to appropriate medical care
13 and treatment, suicidality and death.” AMERICAN MED. ASS’N, *Resolution 122: Removing*
14 *Financial Barriers to Care for Transgender Patients* (June 16, 2008). The AMA also opposes
15 categorical exclusions of coverage for treatment of gender dysphoria because “many of
16 these same treatments ... are often covered for other medical conditions” and “the denial
17 of these otherwise covered benefits for patients suffering from [gender dysphoria]
18 represents discrimination based solely on a patient’s gender identity.” *Id.*

19 50.54. In the past, public and private health administrators and payors excluded
20 coverage for medically necessary treatment of gender dysphoria on the erroneous
21 assumption that such treatments were cosmetic or experimental. Today, the medical
22 consensus recognizes that exclusions of treatment for gender dysphoria on those
23 grounds have no basis in medical science.

24 51.55. At all relevant times, BCBSIL was and remains a “health program or
25 activity” part of which receives federal financial assistance. 42 U.S.C. § 18116. As a result,
26

1 BCBSIL was and continues to be a “covered entity” under the Affordable Care Act,
2 Section 1557.

3 52.56. BCBSIL provided assurances to the U.S. Department of Health and Human
4 Services that it complies with the requirements of Section 1557. *See* 45 C.F.R. § 92.5.

5 53.57. BCBSIL also provided written assurances to C.P. and his parents that it
6 would comply with the requirements of Section 1557. *See App. E*, p. 3; *see also Apps. F, K,*
7 *and L* (same).

8 54.58. Despite these assurances, BCBSIL has administered the Plan’s Exclusion of
9 all treatment that BCBSIL construes to be “for, or leading to, gender reassignment
10 surgery.” BCBSIL continues to do so, to date.

11 *The Denial of Care to C.P.*

12 55.59. Plaintiff C.P. is a boy who is transgender. That means that he was assigned
13 the sex of female at birth but his gender identity is male.

14 56.60. C.P.’s birth certificate, social security identification, and passport all
15 identify him as male. C.P. has identified and lived as male since 2015.

16 57.61. C.P. has been diagnosed with gender dysphoria.

17 58.62. Although BCBSIL and the Plan have covered some of C.P.’s past treatment
18 for gender dysphoria, including injected testosterone medication, treatment by Kevin
19 Hatfield, M.D., C.P.’s primary care provider, as well as mental health counseling related
20 to this condition, BCBSIL has denied coverage for some of C.P.’s medically-necessary
21 gender-affirming medical care because it is “for or leading to gender reassignment
22 surgery.”

23 59.63. On October 14, 2016, BCBSIL initially approved C.P.’s request for
24 preauthorization for a Vantas implant, which is a treatment to delay the onset of female
25
26

1 puberty and was prescribed by Dr. Hatfield as medically-necessary to treat C.P.'s gender
2 dysphoria.

3 ~~60.64.~~ On November 11, 2016, C.P. received the Vantas implant and sometime
4 thereafter, payment for the services related to the implant was made by BCBSIL.

5 ~~61.65.~~ Despite the payment for services, on February 24, 2017, C.P.'s mother was
6 told by a BCBSIL representative that coverage for the Vantas implant would be denied.

7 *App. B.*

8 ~~62.66.~~ On April 21, 2017, C.P.'s mother received a letter from BCBSIL which
9 indicated that coverage was denied because "treatment for transgender services were
10 [sic] allowed incorrectly under the medical plan." *App. C.*

11 ~~63.67.~~ On May 25, 2017, C.P.'s parents appealed the BCBSIL denial. *App. D.*

12 ~~64.68.~~ On October 19, 2017, C.P.'s parents received a letter from BCBSIL
13 indicating that the appeal had been received on June 2, 2017, and that a decision would
14 be made within 15 calendar days, or June 17, 2017, a date that had long since passed.

15 *App. E.*

16 ~~65.69.~~ No formal response from BCBSIL was received by C.P.'s parents until
17 April 26, 2018, eleven months after the appeal was submitted. *App. F.* That letter denied
18 coverage of the service because BCBSIL took the position that it was a "service related to
19 gender-reassignment" and was therefore excluded under the Plan. However, BCBSIL
20 indicated that it would not "clawback" the payments already made to C.P.'s providers
21 related to the Vantas implant.

22 ~~66.70.~~ In 2017, the Plan did not include an exclusion of coverage for "gender-
23 reassignment" treatment or treatment for gender dysphoria.

24 ~~67.71.~~ Starting January 1, 2018, the Plan added an exclusion for gender-affirming
25 treatment. *See App. A.*

1 68-72. BCBSIL administers and enforces the Plan Exclusion, denying coverage of
2 medical care, treatment, and procedures when used to treat gender dysphoria even
3 when such care, treatments, and procedures are medically necessary. BCBSIL applies the
4 Exclusion even though it covers the same or similar procedures for other enrollees in the
5 Plan.

6 69-73. BCBSIL applies and enforces the Exclusion even though BCBSIL has
7 determined that it is illegal for BCBSIL to apply the same or similar Exclusion in its own
8 insured health plans. *See, e.g., App. G.*

9 70-74. In 2018, C.P. was prescribed testosterone cream to treat his gender
10 dysphoria.

11 71-75. After going through a lengthy appeals process, an attorney representing
12 the Plan (*but not BCBSIL*) wrote to C.P.'s attorneys and indicated that the Plan's
13 Exclusion was limited to only "gender reassignment surgery." *App. H.* Specifically, he
14 represented that "[I]n 2019, the only 'transgender health service' specifically excluded
15 under the Plan is gender reassignment surgery."

16 72-76. In July 2019, C.P. and his parents met with his treating physician, Dr.
17 Hatfield, and his therapist, Sharon Booker, regarding C.P.'s need for a second Vantas
18 implant and gender-affirming top surgery (specifically, chest reconstruction).

19 73-77. C.P.'s medical and mental health providers concluded that both
20 procedures were medically necessary to treat his gender dysphoria. *Apps. I, J.*

21 74-78. Requests for pre-authorization for both procedures were submitted to
22 BCBSIL, and both were denied. *Apps. K, L.*

23 75-79. C.P. proceeded to have the procedure for the second Vantas implant on
24 November 6, 2019.

25 76-80. C.P. received chest reconstruction surgery on December 19, 2019.

1 77-81. On December 2, 2019, C.P. and his parents appealed the BCBSIL denial.
2 *App. M.*

3 78-82. On December 23, 2019, BCBSIL issued a denial of the appeal, but claimed
4 that “our prior response dated April 26, 2018 completed the internal appeal process that
5 is available to you” even though the 2019 appeal filed by C.P.’s parents was for two
6 different procedures and the relevant plan language had changed since the 2017 denial
7 and appeal. *See App. N.*

8 79-83. After BCBSIL denied the appeal, it appears to have covered some of the
9 cost of the medications related to the second Vantas implant, but not other related costs.
10 *See App. O.* BCBSIL also continued to deny coverage of nearly all treatment related to
11 C.P.’s mastectomy and chest reconstruction.

12 80-84. BCBSIL has never claimed that C.P.’s treatment for his gender dysphoria
13 is not medically necessary or is “experimental and investigational.”

14 81-85. BCBSIL agreed to administer the Exclusion in the Plan for CHI, even
15 though BCBSIL knew that Plan enrollees with gender dysphoria needed medical
16 treatment for their condition. It did so despite the non-discrimination assurances BCBSIL
17 provided to the federal government and to the Plan’s enrollees.

18 82-86. Based on information and belief, BCBSIL administered the Exclusion
19 despite its own legal analysis that the Exclusion violates the Affordable Care Act’s
20 Section 1557.

21 83-87. BCBSIL has administered the Exclusion to deny coverage of medically
22 necessary treatment for C.P., because the requested treatment would treat his gender
23 dysphoria.
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25
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1 84.88. As a result of BCBSIL's deliberate discriminatory actions, C.P. has not
2 received coverage of medically necessary treatment for his gender dysphoria and his
3 parents have incurred over \$10,000 in out-of-pocket expenses.

4 89. C.P. and his parents anticipate that they will incur additional expenses
5 related to his medically necessary treatment for gender dysphoria, if BCBSIL continues
6 to administer and enforce the Plan's Exclusion.

7 *Denial of Coverage of Gender Affirming Care to S.L.*

8 90. S.L. is enrolled in an employer sponsored health plan administered by
9 BCBSIL.

10 91. The health plan includes a version of the Exclusion.

11 92. S.L. has been diagnosed with both gender dysphoria and early-onset
12 (precocious) puberty.

13 93. S.L. was assigned as male at birth but has identified as female since she
14 was four years old and socially transitioned to living openly as a girl around age seven.
15 She has legally changed her name and gender in identity documents to match her
16 identity.

17 94. S.L. requires puberty-blocking hormones to treat both her gender
18 dysphoria and her early onset puberty.

19 95. S.L.'s health providers requested pre-authorization of her puberty-
20 blockers and received approval of the pre-authorization from BCBSIL.

21 96. Nonetheless, when the claims for coverage of the puberty-blockers were
22 submitted to BCBSIL, the claims were denied under the Exclusion.

23 97. S.L.'s parents appealed the denial, and the appeal was also denied under
24 the Exclusion.

1 98. S.L. will likely need additional puberty-blockers in the future, as well as
2 coverage for any gender-affirming medical care she may seek.

3 *Denial of Coverage of Gender Affirming Care to Emmett Jones*

4 99. Plaintiff Jones is a transgender -man who is enrolled in the Plan, by virtue
5 of his wife’s employment with CommonSpirit Health. The CHI Plan continues to
6 include the Exclusion.

7 100. Although Jones was assigned as female at birth, he is male. He socially
8 transitioned to living openly as a man years ago.

9 101. Jones ishas been diagnosed with gender dysphoria. As part of the
10 treatment for his gender dysphoria, his health care providers recommended that he
11 receive gender-affirming health care in the form of chest surgery and reconstruction.

12 102. In advance of the surgery, Jones contacted BCBSIL where a representative
13 told him that the Plan “does not cover transgender surgery.”

14 103. Jones received the gender affirming chest surgery on May 25, 2023 and
15 paid for the surgery in advance, out-of-pocket.

16 104. On or about June 5, 2023, he submitted a claim for reimbursement for the
17 surgery to BCBSIL, along with extensive supporting documentation to demonstrate that
18 he met the clinical requirements utilized by BCBSIL for gender affirming chest surgery
19 and reconstruction.

20 105. Jones received a denial letter from BCBSIL dated June 27, 2023. The letter
21 was addressed to his provider and did not include any appeal rights or the reason that
22 the claim was not paid.

23 106. Jones also received an explanation of benefits indicating that the “Health
24 Plan Responsibility” was “\$0.00.”

1 90.114. *Class Definitions.* Plaintiffs assert their claims against BCBSIL on
2 behalf of the following class.

3 91.115. The proposed Class is defined as: All individuals who have been,
4 are, or will be participants or beneficiaries in an ERISA self-funded “group health plan”
5 (as defined in 29 U.S.C. §1167(1)) administered by BCBSIL that contains a categorical
6 exclusion denying or limiting coverage for gender affirming health care, like the
7 “Transgender Reassignment Surgery” Exclusion contained in the CHI Plan, at any time
8 on or after November 23, 2014; and who were, are, or will be denied pre-authorization
9 or coverage of otherwise covered services due to BCBSIL’s administration of such an
10 exclusion.

11 92.116. *Size of Class.* The proposed class is expected to be so numerous and
12 geographically dispersed that joinder of all members is impracticable.

13 93.117. *Class Representatives C.P., S.L., and Jones.* Named Plaintiffs C.P.,
14 S.L., and Jones ~~are-is-a~~ members of the proposed class. Plaintiff C.P. was and Plaintiffs
15 S.L. and Jones are C.P. is a beneficiary-beneficiaries in a self-funded group health plans
16 administered by BCBSIL that contains a categorical exclusion denying coverage for
17 gender affirming health care, namely, the “Transgender Reassignment Surgery”
18 Exclusion. C.P. They have ~~has~~ been prescribed otherwise covered services under the
19 group health plan which have been denied by BCBSIL under the “Transgender
20 Reassignment Surgery” Exclusion or they may seek such services in the future.
21 C.P.’s Their claims are typical of the claims of other members of the proposed class and
22 ~~through his mother they, he~~ will fairly and adequately represent the interests of the class.

23 94.118. *Common Questions of Law and Fact.* This action requires a
24 determination of whether BCBSIL’s administration of the Transgender Reassignment
25 Surgery Exclusion and other similar exclusions denying coverage for gender affirming
26

1 health care in the ERISA self-funded plans that it administers, violates Section 1557 of
2 the Affordable Care Act. Adjudication of this issue will in turn determine whether
3 BCBSIL must reprocess all such denied claims and be enjoined from administering such
4 exclusions now and in the future.

5 95.119. *Separate suits would create risk of varying conduct requirements.*

6 The prosecution of separate actions by proposed class members against BCBSIL would
7 create a risk of inconsistent or varying adjudications with respect to individual class
8 members that would establish incompatible standards of conduct. Certification is
9 therefore proper under Federal Rule of Civil Procedure 23(b)(1).

10 96.120. *BCBSIL has acted on grounds generally applicable to the relevant*
11 *class.* By administering and applying policies and exclusions that result in the denial of
12 coverage of gender affirming care, BCBSIL has acted on grounds generally applicable to
13 the relevant class, rendering declaratory relief appropriate respecting the entirety of the
14 class for the particular claim. Certification is therefore proper under Federal Rule of
15 Civil Procedure 23(b)(2).

16 97.121. *Venue.* This action can be most efficiently prosecuted as a class
17 action in the Western District of Washington, where Defendants do business and where
18 C.P. resides. The case is properly assigned to the Western District of Washington in
19 Tacoma, because the claim arose in Kitsap County Washington, where Plaintiff resides.

20 98.122. *Class Counsel.* ~~C.P. and Ms. Pritchard Plaintiffs~~ have retained
21 experienced and competent class counsel. Plaintiffs are represented by Sirianni Youtz
22 Spoonemore Hamburger PLLC, a Seattle-based law firm with significant experience
23 representing individuals who have been denied pension, health or disability benefits
24 under plans governed by both state law and ERISA, as well as in class actions. Plaintiffs
25 are also represented by Lambda Legal Defense and Education Fund, Inc. (“Lambda
26

1 Legal”), the nation’s oldest and largest legal organization dedicated to protecting the
2 rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and everyone living
3 with HIV. Lambda Legal has extensive federal court experience litigating on behalf of
4 LGBT people, including regarding transgender people’s access to nondiscriminatory
5 health care, and has served as class counsel and putative class counsel in a number of
6 LGBT-related cases.

7 **VI. CLAIM FOR RELIEF:**
8 **VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT,**
9 **42 U.S.C. § 18116**

10 99.123. Plaintiffs re-allege and incorporate each of the allegations in the
11 paragraphs above, as though fully set forth herein.

12 100.124. Plaintiffs state this cause of action on behalf of themselves and
13 members of the proposed class for purposes of seeking declaratory and injunctive relief,
14 and challenge the discriminatory sex-based discrimination arising out of the
15 administration of the exclusions denying coverage for gender affirming care, such as the
16 Exclusion, both facially and as applied to Plaintiffs and the proposed class. Named
17 Plaintiffs C.P. and Pritchard also state this cause of action for their individual
18 compensatory damages, including but not limited to out-of-pocket damages, and
19 consequential damages.

20 101.125. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that “an
21 individual shall not, on the ground prohibited under ... title IX of the Education
22 Amendments of 1972 ... be excluded from participation in, denied the benefits of, or be
23 subjected to discrimination under, any health program or activity, any part of which is
24 receiving Federal financial assistance.”

1 ~~102.126.~~ Defendant BCBSIL is a covered “health program or activity” a part
2 of which receives federal financial assistance and is therefore a “covered entity” for
3 purposes of Section 1557.

4 ~~103.127.~~ Discrimination on the basis of sex characteristics, gender identity,
5 nonconformity with sex stereotypes, transgender status, or gender transition is
6 discrimination on the basis of “sex” under Section 1557.

7 ~~104.128.~~ A covered entity, such as BCBSIL, cannot provide or administer
8 health insurance or health benefit coverage which contains a categorical exclusion from
9 coverage for gender-affirming health care, or otherwise impose limitations or restrictions
10 on coverage for specific health services related to gender transition if such limitation or
11 restriction results in discrimination against a transgender individual.

12 ~~105.129.~~ Because BCBSIL is a covered entity under Section 1557 of the ACA,
13 Plaintiffs and members of the proposed class have a right under Section 1557 to receive
14 health benefits administered by BCBSIL free from discrimination on the basis of sex, sex
15 characteristics, gender identity, nonconformity with sex stereotypes, transgender status,
16 or gender transition.

17 ~~106.130.~~ The categorical exclusions of gender affirming care administered by
18 BCBSIL, on their face and as applied to Plaintiffs and members of the proposed class,
19 violate Section 1557’s prohibition against discrimination on the basis of sex in a health
20 program or activity receiving federal financial assistance.

21 ~~107.131.~~ BCBSIL has administered and continues to administer exclusions of
22 gender affirming care, despite the warning from the U.S. Department of Health and
23 Human Services that “[a]n explicit, categorical (or automatic) exclusion or limitation of
24 coverage for all health services related to gender transition is unlawful on its face.” *See*
25 81 Fed. Reg. 31,429. It has done so despite the nondiscrimination assurances it gave to
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1 the federal government and its enrollees. It has done so despite its own conclusion that
2 to engage in such discrimination in its insured plans is illegal.

3 ~~108.132.~~ By administering the Exclusion as an exclusion of all medically
4 necessary care “for, or leading to, gender reassignment surgery,” BCBSIL has drawn a
5 classification that discriminates on the basis of “sex.” Specifically, BCBSIL has denied
6 ~~C.P. Plaintiffs~~ and other similarly situated individuals coverage for medically necessary
7 services based on their sex, sex characteristics, gender identity, nonconformity with sex
8 stereotypes, transgender status, or gender transition. Other enrollees whose gender
9 identity conforms with their sex assigned at birth are able to receive these services, when
10 medically necessary.

11 ~~109.133.~~ By excluding coverage of all health care related to gender dysphoria
12 or any other care BCBSIL determines is “for, or leading to, gender reassignment
13 surgery,” BCBSIL has intentionally discriminated, and continues to discriminate on the
14 basis of sex, against Plaintiffs ~~C.P.~~ and Patricia Pritchard and similarly situated
15 individuals in violation of Section 1557.

16 ~~110.134.~~ BCBSIL has discriminated against Plaintiffs and the members of the
17 proposed class on the basis of sex in violation of Section 1557 and have thereby denied
18 Plaintiffs and the members of the proposed class the full and equal participation in,
19 benefits of, and right to be free from discrimination in a health program or activity.

20 ~~111.135.~~ Plaintiffs and the members of the proposed class have been and
21 continue to be injured by BCBSIL’s administration, application, and enforcement of
22 exclusions to deny coverage for gender affirming care, such as the “Transgender
23 Reassignment Surgery” Exclusion, and are entitled to reprocessing of all claims
24 wrongfully denied and all medical expenses never submitted for consideration by the
25 Plan as a result of any such exclusions.

1 ~~112.136.~~ As a result of BCBSIL's administration of exclusions of coverage for
2 gender affirming care, Plaintiffs have suffered harm, including but not limited to
3 emotional distress, stigmatization, humiliation, a loss of dignity, and financial harm. By
4 knowingly and intentionally offering and administering health care coverage to
5 Plaintiffs that discriminates on the basis of sex, BCBSIL has intentionally violated the
6 ACA, for which the named Plaintiffs are entitled to compensatory damages, including
7 but not limited to out-of-pocket damages, and consequential damages.

8 ~~113.137.~~ Without reprocessing, declaratory and injunctive relief from
9 BCBSIL's ongoing, discriminatory administration of the exclusions of coverage for
10 gender-affirming care, Plaintiffs and proposed class members have suffered and will
11 continue to suffer irreparable harm.

12 VII. DEMAND FOR RELIEF

13 WHEREFORE, Plaintiffs request that this Court:

14 1. Enter judgment on behalf of Plaintiffs and the members of the proposed
15 classes due to BCBSIL's discrimination on the basis of sex in violation of the Affordable
16 Care Act's Section 1557;

17 2. Declare that BCBSIL violated the rights of Plaintiffs and the members of
18 the proposed classes under Section 1557 of the ACA when it administered and enforced
19 the Plan's Exclusion and similar exclusions of all treatment "for, or leading to, gender
20 reassignment surgery," and/or other Plan provisions, policies or practices that wholly
21 exclude or impermissibly limit coverage of gender-affirming health care;

22 3. Enjoin BCBSIL, its agents, employees, successors, and all others acting in
23 concert with them, from administering or enforcing health benefit plans that exclude
24 coverage for gender-affirming health care, including applying or enforcing the Plan's
25 Exclusion of services "for, or leading to, gender reassignment surgery," and other similar
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1 exclusions in the health benefit plans BCBSIL administers and enforces, in violation of
2 the Affordable Care Act during the class period, now and in the future;

3 4. Require BCBSIL, its agents, employees, successors, and all others acting in
4 concert with them, to reprocess and when, medically necessary and meeting the other
5 terms and conditions under the relevant plans, provide coverage (payment) for all
6 denied pre-authorizations and denied claims for coverage during the Class Period that
7 were based solely upon exclusions for gender-affirming care, including but not limited
8 to, the Plan's Exclusion of services "for or leading to gender reassignment surgery;"

9 5. Enter judgment in favor of the named Plaintiffs for damages in an amount
10 to be proven at trial that would fully compensate Plaintiffs for their financial harm,
11 emotional distress and suffering, embarrassment, humiliation, pain and anguish,
12 violations of their dignity, and other damages due to BCBSIL's conduct in violation of
13 Section 1557 of the Affordable Care Act;

14 6. Award reasonable attorneys' fees, costs, and expenses under 42 U.S.C.
15 §1988 and all other applicable statutes; and

16 7. Award such other and further relief as is just and proper.

17 DATED: September 21, 2023.

18 SIRIANNI YOUTZ
19 SPOONEMORE HAMBURGER PLLC

20 /s/ Eleanor Hamburger

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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 AMEND COMPLAINT

**Note on Motion Calendar:
October 6, 2023**

THIS MATTER comes before the Court on Plaintiffs’ Motion for Leave to File a Second Amended Complaint and to Add Parties as Additional Class Representatives, pursuant to FRCP 15(a)(2) and LCR 15. The Court has reviewed all the pleadings and filings in the record, including Plaintiffs’ Motion, the supporting Declaration of Eleanor Hamburger, Defendant’s Opposition, if any, and Plaintiffs’ Reply, if any, and the proposed Second Amended Complaint in *Appendix A* to Plaintiffs’ Motion.

Therefore, pursuant to Fed. R. Civ. P. 15(a)(2), 16(b), and 21, and LCR 15, IT IS HEREBY ORDERED that Plaintiffs’ Motion for Leave to File a Second Amended Complaint and to Add Parties as Additional Class Representatives is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs are directed to file the Second Amended Complaint.

1 IT IS FURTHER ORDERED that Emmett Jones and S.L., by and through her parents,
2 S.R. and R.L., are hereby appointed as Class Representatives in addition to C.P., by and through
3 his parents, Pattie Pritchard and Nolle Pritchard.

4 DATED: October _____, 2023.

5
6 _____
7 Robert J. Bryan
8 United States District Judge

9 Presented by:

10 SIRIANNI YOUTZ
11 SPOONEMORE HAMBURGER PLLC

12 /s/ Eleanor Hamburger
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