

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

PLAINTIFF CLASS'S RESPONSE TO SUPPLEMENTAL ORDER TO THE ORDER ON PLAINTIFFS' MOTION FOR CLASSWIDE RELIEF AND FOR NOMINAL DAMAGES

**Note on Motion Calendar:  
January 12, 2024**

On December 19, 2023, the Court issued an order granting Plaintiffs' motion for classwide relief and for nominal damages, wherein, *inter alia*, it granted the Plaintiff Class's request for declaratory judgment and issued injunctive relief for the Class in the forms of a prospective prohibitory injunction and retrospective relief in the form of reprocessing Class members' unlawfully denied claims. Dkt. No. 207. That same day, the Court issued a supplemental order (1) directing the parties to meet and confer regarding the proposed notices to Class members, including their content and methods of distribution, inform the Court of any agreements, and identify any remaining issues

1 to the Court by February 1, 2024<sup>1</sup>, as well as (2) instructing Plaintiffs' Counsel "to clarify,  
2 in writing, on the record, whether they are abandoning their individual claims for  
3 damages, without prejudice to reprocessing claims," and to "clarify what relief issues, if  
4 any, remain." Dkt. No. 208.

5 In response to the Court's Supplemental Order, Plaintiffs respectfully submit the  
6 following the response:

7 **1. Plaintiffs do not seek individual damages.**

8 In its Supplemental Order, the Court has ordered Plaintiffs' Counsel "to clarify,  
9 in writing, on the record, whether they are abandoning their individual claims for  
10 damages, without prejudice to reprocessing claims." The answer to the Court's question  
11 is yes, but only as to Named Plaintiffs' individual claims, as absent Class members'  
12 claims for damages are not at issue in this litigation. Plaintiffs are not pursuing any  
13 individual damages in light of the classwide relief in the form of reprocessing that the  
14 Court has already ordered and without prejudice to their ability to pursue reprocessing  
15 of their claims, pursuant to the Court's order.<sup>2</sup>

16 **2. The Court should enter final judgment and set a schedule for**  
17 **briefing on Plaintiffs' anticipated motions for attorneys' fees and**  
18 **costs.**

19 Given that the Court has granted Plaintiffs' motion for summary judgment,  
20 motion for class certification, and motion for classwide relief and nominal damages,  
21 there can be no question that Plaintiffs are prevailing parties such that they are entitled  
22 to attorneys' fees and costs following the entry of final judgment by the Court.  
23  
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25 <sup>1</sup> The parties have begun that process. *See* Dkt. No 217-1.

26 <sup>2</sup> Individual Plaintiffs' abandonment of any claim for individual damages is contingent upon and without prejudice to their ability to seek such relief should class certification be reversed on appeal.

1 Prevailing plaintiffs in cases involving claims under Section 1557 of the  
 2 Affordable Care Act are entitled to move for attorneys' fees and costs (including expert  
 3 costs), pursuant to 42 U.S.C. § 1988.<sup>3</sup> Indeed, it is well settled that in civil rights cases  
 4 where an award of attorneys' fees is authorized by statute, such as this one, "a prevailing  
 5 plaintiff should ordinarily recover an attorney's fee unless special circumstances would  
 6 render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (internal  
 7 quotation marks omitted).

8 Accordingly, Plaintiffs respectfully request that the Court order a briefing  
 9 schedule for Plaintiffs' anticipated motions for attorneys' fees and costs following entry  
 10 of final judgment, which they request the Court enter after approving the Class notice.  
 11 Plaintiffs further request that, consistent with Local Civil Rule 54(d)(1), that Plaintiffs'  
 12 Motions for Attorneys' Fees and Costs be filed no later than 21 days after entry of final  
 13 judgment, and that the motion be noted and responsive briefing occur as set forth in  
 14 Local Civil Rule 7(d)(3).<sup>4</sup>

15 **3. The Court should grant the Named Plaintiffs with Class**  
 16 **representative service awards.**

17 Aside from the nominal damages it has already awarded, the Court should  
 18 provide Named Plaintiffs with Class representative service awards. After more than  
 19 three years of litigation, Named Plaintiffs were able to secure meaningful relief in the  
 20 form of a declaratory judgment, a prospective prohibitory injunction benefiting the  
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22 <sup>3</sup> Section 1557 of the ACA provides that "[t]he enforcement mechanisms provided for and available  
 23 under such ... title IX .. shall apply for purposes of violations of this subsection." 42 U.S.C. § 18116(b).  
 24 And 42 U.S.C. § 1988(b) expressly provides that "In any action or proceeding to enforce a provision of ...  
 25 title IX of Public Law 92-318 [20 U.S.C. § 1681 et seq.] ..., the court, in its discretion, may allow the  
 26 prevailing party, other than the United States, a reasonable attorney's fee as part of the costs ... ."

<sup>4</sup> Plaintiffs note that this would enlarge the typical timeframe for moving for attorneys' fees under  
 Federal Rule of Civil Procedure 54(d) and would join the deadlines for the motions for attorneys' fees and  
 costs, which are distinct as set forth in Local Civil Rule 54(d)(1)-(2) and (5).

1 Class, and an injunction providing for reprocessing of Class members' unlawfully  
2 denied claims since November 23, 2016. Dkt. No. 207.

3 All Named Plaintiffs have served honorably as Class representatives and worked  
4 to ensure that the interests of the Class were always protected. All of them have assisted  
5 Class counsel in the preparation of this case, reviewed papers, and submitted  
6 declarations in support of the case. Named Plaintiffs C.P. and Patricia Pritchard have  
7 served as Class representatives in this case for over three years, been subjected to  
8 intensive and comprehensive discovery, including responding to discovery requests and  
9 participating in deposition, and carried the burden of this important case for years.  
10 Named Plaintiffs S.L. and Emmett Jones were willing to join the case at a critical juncture  
11 to ensure prospective injunctive relief.

12 "The trial court has discretion to award incentives to the class representatives."  
13 *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329 (W.D. Wash. 2009). Such  
14 "[i]ncentive awards are payments to class representatives for their service to the class in  
15 bringing the lawsuit." *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir.  
16 2013). In determining the propriety and amount of an incentive award, courts consider  
17 multiple criteria, including: (1) the risk to the class representative in commencing a class  
18 action; (2) the amount of time and effort spent by the class representative; (3) the  
19 duration of the litigation; (4) actions taken by the class representative to protect the  
20 class's interest; (5) the benefit received by the class based on the class representative's  
21 actions; and (6) the personal benefit, or lack thereof, enjoyed by the class representative  
22 as a result of the litigation. *See Pelletz*, 592 F. Supp. 2d at 1329; *Dexter's LLC v. Gruma*  
23 *Corp.*, No. 23-CV-212-MMA-AHG, 2023 WL 8790268, at \*11 (S.D. Cal. Dec. 19, 2023); *Van*  
24 *Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). Named Plaintiffs meet  
25 each of these factors as will be demonstrated in subsequent briefing.  
26

1 Accordingly, Plaintiffs respectfully request that the Court provide Named  
2 Plaintiffs with Class representative service awards at an amount to be determined  
3 following briefing to occur simultaneously with Plaintiffs' anticipated motions for  
4 attorneys' fees and costs.

5 **4. There are no remaining relief issues.**

6 Aside from the matters identified herein and the Supplemental Order, namely,  
7 the matters of attorneys' fees and costs, Class representative service awards, approval of  
8 Class notice, and a determination of BCBSIL's pending Motion to Stay, Plaintiffs  
9 respectfully inform the Court that there are no other remaining relief issues in this case.

10 DATED: January 12, 2024.

11 SIRIANNI YOUTZ  
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13 /s/ Eleanor Hamburger

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18 *I certify that the foregoing contains 1,179 words,*  
19 *in compliance with the Local Civil Rules.*

20 LAMBDA LEGAL DEFENSE AND  
21 EDUCATION FUND, INC.

22 /s/ Omar Gonzalez-Pagan

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