

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; C.P.'s mother (Patricia Pritchard); a twelve-year-old transgender girl (S.L.), by
10 and through her parents; and a transgender man (Emmett Jones), all of whom are being
11 discriminated against on the basis of sex because C.P., S.L., and Emmett Jones are
12 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 6. S.L. is enrolled in a different employer-sponsored health plan administered
20 by BCBSIL by virtue of her father's employment.

21 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 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.

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.”

10. Such exclusions contravene the well-established medical consensus that gender affirming health care can be medically necessary and even life-saving. Other 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.

11. Plaintiffs have been denied coverage for medically necessary gender affirming health care because C.P., 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 their plans’ targeted discrimination against transgender enrollees, which wrongly deems their health care needs as unworthy of equal coverage.

1 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 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
7 this forum.

8 **IV. FACTUAL BACKGROUND**

9 *Gender Dysphoria and Its Treatment*

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

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

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

17 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 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.

1 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 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 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 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 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 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 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 49. BCBSIL offers health care plans in the health care exchanges established
25 under the ACA.
26

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

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

5 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 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 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 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 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 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 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 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 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 61. C.P. has been diagnosed with gender dysphoria.

17 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 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 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 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 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 67. On May 25, 2017, C.P.'s parents appealed the BCBSIL denial. *App. D.*

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

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

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

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

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

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

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

3 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 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 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 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 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 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.
24
25
26

1 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 has been diagnosed with gender dysphoria. As part of the treatment
10 for his gender dysphoria, his health care providers recommended that he receive gender-
11 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."

1 107. Jones is uncertain if the denial is based on the Exclusion or on his
2 deductible. Nonetheless, he intends to appeal the denial in the near future.

3 108. Jones anticipates that he may need gender-affirming care and surgery in
4 the future.

5 109. BCBSIL's administration of the Exclusion denies transgender enrollees
6 with gender dysphoria the benefits and health coverage available to other insureds. It is
7 discrimination on the basis of sex, which includes discrimination on the basis of sex
8 characteristics, gender identity, nonconformity with sex stereotypes, transgender status,
9 and gender transition.

10 110. Plaintiffs C.P. and his parents and S.L. and her parents have appealed
11 BCBSIL's denial of coverage for their medically necessary treatment, but their appeals
12 have been denied.

13 111. Because any further administrative appeals would be futile, no further
14 administrative appeals by Plaintiffs are required before a claim may be brought under
15 §1557.

16 112. Because of BCBSIL's administration and enforcement of the Exclusion,
17 Plaintiffs have suffered emotional distress, humiliation, degradation, embarrassment,
18 emotional pain and anguish, violation of their dignity, loss of enjoyment of life, and other
19 compensatory damages, in an amount to be established at trial.

20 **V. CLASS ALLEGATIONS**

21 113. Plaintiffs, on behalf of themselves and all similarly situated individuals,
22 bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil
23 Procedure.

24 114. *Class Definitions.* Plaintiffs assert their claims against BCBSIL on behalf
25 of the following class.
26

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

9 116. *Size of Class.* The proposed class is expected to be so numerous and
10 geographically dispersed that joinder of all members is impracticable.

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

21 118. *Common Questions of Law and Fact.* This action requires a determination
22 of whether BCBSIL’s administration of the Transgender Reassignment Surgery
23 Exclusion and other similar exclusions denying coverage for gender affirming health
24 care in the ERISA self-funded plans that it administers, violates Section 1557 of the
25 Affordable Care Act. Adjudication of this issue will in turn determine whether BCBSIL
26

1 must reprocess all such denied claims and be enjoined from administering such
2 exclusions now and in the future.

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

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

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

18 122. *Class Counsel.* Plaintiffs have retained experienced and competent class
19 counsel. Plaintiffs are represented by Sirianni Youtz Spoonemore Hamburger PLLC, a
20 Seattle-based law firm with significant experience representing individuals who have
21 been denied pension, health or disability benefits under plans governed by both state
22 law and ERISA, as well as in class actions. Plaintiffs are also represented by Lambda
23 Legal Defense and Education Fund, Inc. (“Lambda Legal”), the nation’s oldest and
24 largest legal organization dedicated to protecting the rights of lesbian, gay, bisexual, and
25 transgender (“LGBT”) people and everyone living with HIV. Lambda Legal has
26

1 extensive federal court experience litigating on behalf of LGBT people, including
2 regarding transgender people’s access to nondiscriminatory health care, and has served
3 as class counsel and putative class counsel in a number of LGBT-related cases.

4 **VI. CLAIM FOR RELIEF:**
5 **VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT,**
6 **42 U.S.C. § 18116**

7 123. Plaintiffs re-allege and incorporate each of the allegations in the
8 paragraphs above, as though fully set forth herein.

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

16 125. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that “an individual
17 shall not, on the ground prohibited under ... title IX of the Education Amendments of
18 1972 ... be excluded from participation in, denied the benefits of, or be subjected to
19 discrimination under, any health program or activity, any part of which is receiving
20 Federal financial assistance.”

21 126. Defendant BCBSIL is a covered “health program or activity” a part of
22 which receives federal financial assistance and is therefore a “covered entity” for
23 purposes of Section 1557.

24 127. Discrimination on the basis of sex characteristics, gender identity,
25 nonconformity with sex stereotypes, transgender status, or gender transition is
26 discrimination on the basis of “sex” under Section 1557.

1 128. A covered entity, such as BCBSIL, cannot provide or administer health
2 insurance or health benefit coverage which contains a categorical exclusion from
3 coverage for gender-affirming health care, or otherwise impose limitations or restrictions
4 on coverage for specific health services related to gender transition if such limitation or
5 restriction results in discrimination against a transgender individual.

6 129. Because BCBSIL is a covered entity under Section 1557 of the ACA,
7 Plaintiffs and members of the proposed class have a right under Section 1557 to receive
8 health benefits administered by BCBSIL free from discrimination on the basis of sex, sex
9 characteristics, gender identity, nonconformity with sex stereotypes, transgender status,
10 or gender transition.

11 130. The categorical exclusions of gender affirming care administered by
12 BCBSIL, on their face and as applied to Plaintiffs and members of the proposed class,
13 violate Section 1557's prohibition against discrimination on the basis of sex in a health
14 program or activity receiving federal financial assistance.

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

22 132. By administering the Exclusion as an exclusion of all medically necessary
23 care "for, or leading to, gender reassignment surgery," BCBSIL has drawn a classification
24 that discriminates on the basis of "sex." Specifically, BCBSIL has denied Plaintiffs and
25 other similarly situated individuals coverage for medically necessary services based on
26

1 their sex, sex characteristics, gender identity, nonconformity with sex stereotypes,
2 transgender status, or gender transition. Other enrollees whose gender identity
3 conforms with their sex assigned at birth are able to receive these services, when
4 medically necessary.

5 133. By excluding coverage of all health care related to gender dysphoria or any
6 other care BCBSIL determines is “for, or leading to, gender reassignment surgery,”
7 BCBSIL has intentionally discriminated, and continues to discriminate on the basis of
8 sex, against Plaintiffs and Patricia Pritchard and similarly situated individuals in
9 violation of Section 1557.

10 134. BCBSIL has discriminated against Plaintiffs and the members of the
11 proposed class on the basis of sex in violation of Section 1557 and have thereby denied
12 Plaintiffs and the members of the proposed class the full and equal participation in,
13 benefits of, and right to be free from discrimination in a health program or activity.

14 135. Plaintiffs and the members of the proposed class have been and continue
15 to be injured by BCBSIL’s administration, application, and enforcement of exclusions to
16 deny coverage for gender affirming care, such as the “Transgender Reassignment
17 Surgery” Exclusion, and are entitled to reprocessing of all claims wrongfully denied and
18 all medical expenses never submitted for consideration by the Plan as a result of any
19 such exclusions.

20 136. As a result of BCBSIL’s administration of exclusions of coverage for gender
21 affirming care, Plaintiffs have suffered harm, including but not limited to emotional
22 distress, stigmatization, humiliation, a loss of dignity, and financial harm. By knowingly
23 and intentionally offering and administering health care coverage to Plaintiffs that
24 discriminates on the basis of sex, BCBSIL has intentionally violated the ACA, for which
25
26

1 the named Plaintiffs are entitled to compensatory damages, including but not limited to
2 out-of-pocket damages, and consequential damages.

3 137. Without reprocessing, declaratory and injunctive relief from BCBSIL's
4 ongoing, discriminatory administration of the exclusions of coverage for gender-
5 affirming care, Plaintiffs and proposed class members have suffered and will continue
6 to suffer irreparable harm.

7 **VII. DEMAND FOR RELIEF**

8 WHEREFORE, Plaintiffs request that this Court:

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

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

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

23 4. Require BCBSIL, its agents, employees, successors, and all others acting in
24 concert with them, to reprocess and when, medically necessary and meeting the other
25 terms and conditions under the relevant plans, provide coverage (payment) for all
26

1 denied pre-authorizations and denied claims for coverage during the Class Period that
2 were based solely upon exclusions for gender-affirming care, including but not limited
3 to, the Plan's Exclusion of services "for or leading to gender reassignment surgery;"

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

9 6. Award reasonable attorneys' fees, costs, and expenses under 42 U.S.C.
10 §1988 and all other applicable statutes; and

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

12 DATED: October 20, 2023.

13 SIRIANNI YOUTZ
14 SPOONEMORE HAMBURGER PLLC

15 /s/ Eleanor Hamburger

16 Eleanor Hamburger (WSBA #26478)
17 Daniel S. Gross (WSBA #23992)
18 3101 Western Avenue, Suite 350
19 Seattle, WA 98121
20 Tel. (206) 223-0303; Fax (206) 223-0246
21 Email: ehamburger@sylaw.com
22 dgross@sylaw.com

23 LAMBDA LEGAL DEFENSE AND
24 EDUCATION FUND, INC.

25 /s/ Omar Gonzalez-Pagan

26 Omar Gonzalez-Pagan*
120 Wall Street, 19th Floor
New York, NY 10005
Tel. (212) 809-8585; Fax (212) 809-0055
Email: ogonzalez-pagan@lambdalegal.org

JENNIFER C. PIZER*
4221 Wilshire Boulevard, Suite 280
Los Angeles, CA 90010
Tel. (213) 382-7600; Fax (213) 351-6050
Email: jpizer@lambdalegal.org

*Admitted *pro hac vice*.

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26