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 REPLY TO DEFENDANT'S SUPPLEMENTAL BRIEFING

Note on Motion Calendar:
October 20, 2023

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I. INTRODUCTION

BCBSIL concedes, as it must, that "Section 1557 adopts the enforcement mechanisms of Title IX" including the "remedies traditionally available in suits for breach of contract." Dkt. No. 179, p. 5, *citing Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1568 (2022). In *Cummings*, the Supreme Court confirmed that the normal contract remedies, including injunctive relief, are available for claims of discrimination under Section 1557. *Id*. at 1568, 1571. The recent holding in *Wit* confirms that injunctive relief can include reprocessing of wrongfully denied claims, even in litigation to enforce ERISA rights. *Wit v. United Behavioral Health*, 79 F.4th 1068, 1084 (9th Cir. 2023) ("*Wit 3*").[1]

The Ninth Circuit's decision in *Wit 3* broadly repudiates its previous, now withdrawn decision in that case and embraces the reprocessing remedy in most circumstances. *Id*. at 1088–89. BCBSIL's Motion to Decertify the Class (Dkt. No. 156) should be denied, and Plaintiffs' Motion for Classwide Declaratory and Permanent Injunctive Relief (Dkt. No. 153) should be granted. Specifically, the Court has concluded that BCBSIL engages in illegal discrimination when it administers the gender-affirming medical care Exclusions. Dkt. No. 148. Despite this Order, BCBSIL continues to administer the Exclusions with impunity. *See* Dkt. Nos. 176, 177. To prevent further irreparable harm, the Court should issue an order that:

(1) Declares that BCBSIL, as a covered entity subject to Section 1557, cannot administer a discriminatory exclusion, even at the request of an employer or plan sponsor.

(2) Excuses all class members from appeals deadlines and exhaustion requirements for claims for gender affirming care services and treatments that were denied under the

[1] This case brought a single claim under Section 1557 of the Affordable Care Act, not under ERISA. Given the Court's request for supplemental briefing regarding *Wit*, Plaintiffs note that if at all relevant, *Wit 3* supports Plaintiffs' argument that the requested relief, injunctive reprocessing, is proper.

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Exclusions as either pre-service authorizations or post-service claims, pursuant to the doctrines of equitable tolling and anticipatory repudiation.

(3) Enjoins BCBSIL to administer any claims for gender-affirming care (where the date of service is during the class period or in the future), without applying the Exclusions, but consistent with all other terms and conditions in effect at the date of service, including payment of any valid and approved claims by BCBSIL as described in the existing contracts.

(4) Provides notice to all class members of the Court's order at BCBSIL's expense.

II. ARGUMENT

A. An Injunctive Order Requiring Classwide Reprocessing Without Application of the Exclusion is Proper under *Wit 3*.

BCBSIL misrepresents *Wit 3*, asserting, ***without citation***, that "the class must be defined so that there is no question that there would be coverage upon remand." Dkt. No. 179, p. 3:17–18. *Wit 3* does not stand for this proposition. At most, *Wit 3* holds that a class seeking to enforce ERISA requirements must demonstrate that "all class members were denied a full and fair review of their claims or that such a common showing is possible" by the defendants' challenged actions. 79 F.4th at 1086. Although the Class does not seek to enforce ERISA here, it has nonetheless shown that all class members were denied a "full and fair review" of their pre-service requests and post-service claims.

As a standard practice, BCBSIL applied the illegal discriminatory Exclusion to each class member's pre-service requests and post-service claims for gender-affirming medical care, or will do so in the future. *See* Dkt. No. 148, p. 11:11–13 ("Parties do not dispute that Blue Cross denied other class members gender affirming care under exclusions in other self-funded plans"). The Court previously concluded, the "trigger for the application of the Exclusion and a denial of coverage was a diagnosis of 'gender dysphoria' for C.P. and other class members." *Id*., p. 11:20–22. This is unlawful discrimination, as "[g]ender dysphoria cannot be understood without

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referencing sex….” Dkt. No. 148 at 12, *quoting Kadel v. Folwell*, 2022 U.S. Dist. LEXIS 190506, at *12 (M.D.N.C. Oct. 19, 2022); *see also Dekker v. Weida*, 2023 U.S. Dist. LEXIS 107421, at *40 (N.D. Fla. June 21, 2023) (“To know whether treatment … is covered, one must know whether the patient is transgender. And to know whether treatment … is covered, one must know the patient’s natal sex.”). No “full and fair review” is possible when the review is tainted by illegal discrimination. The remedy for such illegal discrimination is a “do-over” without the application of the discriminatory Exclusions. *See Franks v. Bowman Transp. Co.*, 424 U.S. 747, 764 (1976) (Courts have broad “equitable powers to fashion the most complete relief possible … [so that class members may be] restored to a position where they would have been were it not for the unlawful discrimination,” *citing* 118 Cong. Rec. 7166, 7168 (1972)); *Sangster v. United Air Lines, Inc.*, 633 F.2d 864, 867 (9th Cir. 1980); *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 868 (9th Cir. 2014).

Nonetheless, BCBSIL argues that decertification is required because it theorizes that some class members’ claims may have been denied for “reasons wholly independent” of the gender-affirming medical care Exclusions and are therefore not properly part of the Class. Dkt. No. 179, p. 1, *citing Wit 3*.

There are at least four problems with BCBSIL’s hypothesis:

First, BCBSIL ignores the fact that the Class as defined by the Court includes only class members who were denied coverage based on the Exclusions or will be in the future. The Class definition is limited to people who are enrolled in a plan with an illegal Exclusion and who “were, are or will be denied” preauthorization or post-treatment services due to the Exclusion. *See* Dkt. No. 143, p. 2 (The Class definition is limited to enrollees in BCBSIL-administered plans that contain categorical exclusions of gender affirming care and who “were, are or will be denied pre-authorization or coverage of treatment with ***excluded*** Gender Affirming Health Care Services”) (emphasis added). All class members were, are, or will be subject to the illegal Exclusion, if BCBSIL’s practices are not enjoined.

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Second, it is undisputed that BCBSIL applied and will continue to apply the Exclusions to class members' requests for excluded gender-affirming medical care. As BCBSIL's Rule 30(b)(6) witness testified, the denials in these plans are triggered by the mere presence of a diagnosis of gender dysphoria. *See* Dkt. No. 100-5 at 40:17–22. Indeed, as part of its effort to identify the health plans that contain the Exclusions, BCBSIL worked backwards from the denials with a diagnostic code for gender dysphoria to identify the plan exclusions that were generating such denials. *Id*., pp. 23:15–24:6, 36:5–24, 37:9–16, 40:4–10. When BCBSIL considered class members' claims, it never reached other reasons for the denials, such as medical necessity, because the Exclusion blocks all consideration of other reasons: the presence of a diagnosis of gender dysphoria on the claim triggers the automatic application of the Exclusions. Accordingly, each class member was or will be subject to unlawful discrimination when submitting claims for excluded gender-affirming medical care. Dkt. No. 148 at 11:16–17:6.

Third, BCBSIL hypothesizes that some class members may have been denied gender-affirming medical care for independent reasons—***in addition to the Exclusion***—but offers no evidence of any such denials. As a practical matter, assuming some class members' claims were or could be denied based on the Exclusions ***and*** other reasons, if those class members submit a claim for reprocessing to BCBSIL, their claim will simply be denied based upon that independent reason, but this time without the illegal Exclusion blocking any meaningful appeal.

Fourth, and finally, should the Court be concerned about the class definition in light of *Wit 3*—and it should not be—there is a simple solution: The Court can amend the class definition to state more clearly that the Class is limited to only enrollees in BCBSIL-administered plans that contain the Exclusions whose claims "were, are or will be" denied pursuant to the Exclusions. Fed. R. Civ. P. 23(c)(1). The Class maintains that the class definition is sufficiently clear that class members are all denied either pre-service authorization or post-service claims based on the Exclusions but does not object to any rewording that the Court concludes would be helpful.

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B. Class Members Who Are No Longer in Plans Administered by BCBSIL Are Entitled to Reprocessing.

BCBSIL baldly asserts that it cannot reprocess claims for class members with whom it has "no current relationship." Dkt. No. 179, p. 3:19–22. BCBSIL identifies no authority for this proposition. The Court's remedies for BCBSIL's illegal discrimination are not dependent on whether there is a current relationship between BCBSIL and class members. Rather, courts have "wide discretion" to put in place "the most complete relief possible" to restore those injured to where they would have been but for the unlawful discrimination. *Sangster*, 633 F.2d at 867; *Ollier*, 768 F.3d at 868 ("the district court had broad powers to tailor equitable relief so as to vindicate the rights" protected under Title IX). The Court's authority to order a "make whole" remedy does not depend on whether BCBSIL continues to administer a health plan to class members.

BCBSIL's argument about enrollees for whom it does not currently administer benefits is irrelevant for a second reason: BCBSIL has an ongoing contractual relationship with each employer for whom it administered the Exclusion in the past. As BCBSIL's Rule 30(b)(6) witness testified, ***in every instance***, BCBSIL insisted on an indemnification agreement that the employer would reimburse BCBSIL for any expenses incurred related to the Exclusions. *See* Dkt. No. 160-2 at 9; Dkt. No. 160-3 at 131:15–133:3. Those indemnification agreements remain in force, and BCBSIL offers no evidence to the contrary.

In any event, BCBSIL is not relieved of its reprocessing and payment obligations even if the indemnification agreements are invalid or ineffective. BCBSIL agreed to engage in illegal discrimination on behalf of its employer-customers and actively administered the Exclusions in a discriminatory manner. BCBSIL cannot evade liability for its discriminatory acts by pointing the finger at its contracting employers. *See* 29 U.S.C. § 1144(d); Dkt. No. 148 at 16–17.

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C. ERISA Does Not Limit the Remedies Available for Violations of Section 1557.

BCBSIL claims that reprocessing is unavailable under Section 1557 because such an order would "pick apart ERISA's 'comprehensive scheme of civil remedies.'" Dkt. No. 179 at 4:16–18. BCBSIL seems to argue that Congress did not intend to provide remedies outside of ERISA when it enacted Section 1557, but it fails to identify any caselaw, statute, regulation, federal guidance, or other evidence in support of this argument.

BCBSIL's argument is precluded by the law of the case. "The law of the case doctrine is a 'guide to discretion,' under which 'a court is generally precluded from reconsidering an issue that has already been decided by the same court.'" *Straitshot Commc'ns, Inc. v. Telekenex, Inc.*, 2011 U.S. Dist. LEXIS 138859, at *6 (W.D. Wash. Dec. 1, 2011), *quoting United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). This Court has already held that "ERISA expressly provides that it is not to be construed to impair laws like Section 1557." Dkt. No. 148, at 16; *id.* at 16–17 ("ERISA specifically provides that its requirements are not to be construed to invalidate or impair laws like Section 1557 … Section 1557 supplements the ERISA requirements.").

In any event, to determine whether Congress intended Section 1557's remedies to be limited to only those authorized under ERISA, the Court must first consider the plain language of the statute, within the context of the ACA as a whole. *See King v. Burwell*, 576 U.S. 473, 497–98 (2015). The plain language of Section 1557 does not limit remedies to only those under ERISA, but rather calls out a different statute, Title IX, to describe Section 1557's enforcement remedies:

> [A]n individual shall not, on the ground prohibited under … title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) … be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance…. ***The enforcement mechanisms provided for and available under … title IX … shall apply for purposes of violations of this subsection.***

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42 U.S.C. § 18116(a) (emphasis added). Congress could have—but did not—limit enforcement of Section 1557 to only the remedies available under ERISA.[2]

Similarly, the U.S. Supreme Court and the Ninth Circuit have concluded that the available remedies for violations of Section 1557 are those applicable to claims under Title IX, not ERISA. *See Cummings*, 142 S. Ct. at 1568; *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022); *see, e.g., Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1210 (9th Cir. 2020); *Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 950 (9th Cir. 2020) (allowing *Doe* and *Schmitt* plaintiffs to assert Section 1557 discrimination claims in group health plans that are governed by ERISA). ***No court has limited the remedies available under Section 1557 to only those available under ERISA***.

Consistent with the plain language of the statute and existing jurisprudence, other courts, in addition to this one, have concluded that ERISA and Section 1557 give rise to separate and distinct claims, each with their own remedies. For example, in *Scott v. St. Louis Univ. Hosp.*, a plaintiff brought a claim under Section 1557 challenging a similar gender-affirming medical care exclusion. The defendant in that case argued that since ERISA is a "comprehensive statute," only ERISA remedies could address a violation of Section 1557 when imposed in a health plan governed by ERISA, making the same arguments BCBSIL makes here. *Id.*, 600 F. Supp. 3d 956, 959 (E.D. Mo. 2022). The federal district court unequivocally rejected this argument:

> Plaintiff has not alleged a claim pursuant to ERISA, and is not "seeking to enforce [her] rights under an ERISA plan." Instead, Plaintiff admits the Plan expressly excludes coverage for sex transition and she has no rights to enforce under the Plan. ***ERISA does not preempt other federal law claims, including Plaintiff's claims pursuant to Title VII and the ACA.***

Id., (emphasis added, cleaned up). *See also Grossman v. Dirs. Guild of Am., Inc.*, 2017 U.S. Dist. LEXIS 223142, at *15–17 (C.D. Cal. Mar. 6, 2017) (Section 1557 is not incorporated into ERISA

[2] Section 1557 is ***not*** incorporated into ERISA, and ERISA does not limit remedies available under Section 1557. *See* Dkt. No. 169, at 2:3–8.

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but was established by Congress as having a separate private right of action and independent remedies); *York v. Wellmark, Inc.*, 2017 U.S. Dist. LEXIS 199888, at *53 (S.D. Iowa Sep. 6, 2017) (The plain meaning of Section 1557 "is clear and unambiguous – claims for discrimination are available on the grounds prohibited in the four listed federal civil rights statutes, and are to be addressed under the provided for and available corresponding enforcement mechanisms of the four statutes"); *Briscoe v. Health Care Serv. Corp.*, 281 F. Supp. 3d 725, 739 n.4 (N.D. Ill. 2017) ("The ACA creates a private right of action specifically for § 1557"); *SEPTA v. Gilead Scis., Inc.*, 102 F. Supp. 3d 688, 698 (E.D. Pa. 2015) (Section 1557 provides "both a private right and a private remedy for violations of Section 1557").

BCBSIL concedes, as it must, that Section 1557's remedies are governed by Title IX.[3] Dkt. No. 179, at 5:5 *citing to Cummings*, 142 S. Ct. at 1568. *Cummings* holds that remedies "normally available for contract actions" are available under Section 1557, including injunctive relief. *Id*. at 1568, 1571. BCBSIL does not disagree. Dkt. No. 179, at 5.

BCBSIL then mistakenly argues that ERISA remedies under 29 U.S.C. § 1132(a)(3) are the same as those "traditionally available contract remedies," in order to shoehorn this case into the *Wit 3* holding. *See* Dkt. No. 179 at 5:9–15. BCBSIL is flatly wrong. ERISA claims and remedies are far more limited than those normally available for contract actions because ERISA claims are limited to the specific remedies described in statute, 29 U.S.C. § 1132(a), as "guided by principles of trust law." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989) (emphasis added); *Ramos v. Banner Health*, 1 F.4th 769, 778 (10th Cir. 2021) ("In developing the remedies for violations of ERISA, 'Congress intended the federal courts to draw on principles of traditional trust law.'"). Normally available contract remedies are far broader than ERISA

[3] None of the cases relied upon by BCBSIL for its claim that ERISA's "comprehensive scheme" limits Section 1557 remedies actually address Section 1557 and its interaction, if any, with ERISA. *See* Dkt. No. 179, at 4–5. Indeed, all of the cases cited by BCBSIL for this proposition date from before passage of the ACA. *See id.*

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remedies, and include injunctive and equitable relief, even when sought for Section 1557 claims. *See Cummings*, 142 S. Ct. at 1568. BCBSIL offers no authority to the contrary.

Courts have traditionally ordered injunctive and equitable relief to remedy discrimination violations. *See, e.g., Thornton v. Comm'r of Soc. Sec.*, 2020 U.S. Dist. LEXIS 220711, at *8–9 (Remedy for discriminatory denial of certain federal benefits to same sex married couples was reprocessing of wrongfully denied benefits); *Hart v. Colvin*, 310 F.R.D. 427, 438–39 (N.D. Cal. 2015) (Remedy for wrongful denial of disability benefits is reprocessing); *Huynh v. Harasz*, 2015 U.S. Dist. LEXIS 154078, at *30 (N.D. Cal. Nov. 12, 2015) (where "[d]efendants implemented a uniform, blanket, and illegal policy in denying all reasonable accommodation requests" reprocessing of those requests is an appropriate form of injunctive relief for a class certified under Rule 23(b)(2)). This is true for Section 1557 and Title IX cases as well. *See, e.g., Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998)(injunctive or equitable relief fulfills Title IX's focus on protecting individuals from discriminatory practices); *Sangster*, 633 F.2d at 867; *Ollier*, 768 F.3d at 868; *Kadel v. Folwell*, 2022 U.S. Dist. LEXIS 218104, at *10 (M.D.N.C. Dec. 5, 2022) (granting summary judgment on claims for injunctive relief under Section 1557); *Fain v. Crouch*, 2022 U.S. Dist. LEXIS 137084, at *45 (S.D. W. Va. Aug. 2, 2022) (enjoining defendants "from enforcing or applying [a gender-affirming care] exclusion" under Section 1557); *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001, 1003 (W.D. Wis. 2019) (same); *Boyden v. Conlin*, 341 F. Supp. 3d 979, 1005 (W.D. Wis. 2018) (plaintiffs have a right to pursue equitable relief for violations of Section 1557). The Court is not limited to ERISA remedies in this case.[4]

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[4] Nor must Class members show that they are unequivocally entitled to benefits even if ERISA remedies applied. *See* Dkt, No. 179, p. 3 ("the class must be defined so that there is no question that there would be coverage upon remand"). BCBSIL misreads *Wit 3*, which only requires that class members with an ERISA claim for benefits show that they "might" be eligible for benefits – a standard met by the requests for pre-service authorization and post-service claims submitted by Class members. *See Wit 3*, 79 F.4th at 1084. Here, since all claims were denied based upon the Exclusion, a "positive benefits determination" under ERISA occurred when the Court ruled that the standard denial is illegal. Dkt. No. 148; *see Hendricks v. Aetna Life Ins. Co.*, 344 F.R.D. 237, 246 (C.D. Cal. 2023).

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D. Equitable and Injunctive Relief, Including Reprocessing, is Proper for the Plaintiff Class Certified under Rule 23(b)(1) and (b)(2).

BCBSIL argues that reprocessing is not available when a class is certified under Rule 23(b)(1) or (b)(2). Dkt, No. 179 at 5–6. This is nothing more than a rehash of its previous argument that the injunctive relief sought here is really a form of money damages only available under Rule 23(b)(3) based on the *Wit 2* decision. *See id., citing to* Dkt. No. 156 (BCBSIL's briefing before *Wit 3* was issued). The Ninth Circuit rejected this argument when it withdrew *Wit 2* and confirmed in *Wit 3* that reprocessing is a proper remedy, without regard for the type of class certified under Rule 23. *See Wit 3*, 79 F. 4th at 1084–85. BCBSIL misrepresents *Wit 3* when it asserts otherwise.

Reprocessing is a form of injunctive relief available for classes certified under Rule 23(b)(1) and (b)(2) when a defendant applied an illegal standard, as a general practice. In that situation, classes are entitled to "make whole" remedies, including reprocessing that places them in the position they would have been, but for the application of the illegal standard.[5] *See, e.g., Tech. Access Found. Health Benefit Plan v. Grp. Health Coop. (In re Z.D.)*, 2012 U.S. Dist. LEXIS 149610, at *29 (W.D. Wash. Oct. 17, 2012) (Ordering injunctive relief in the form of reprocessing for classes certified under Rule 23(b)(1) and (b)(2)); *Meidl v. Aetna, Inc.*, 2017 U.S. Dist. LEXIS 70223, at *57 (D. Conn. May 4, 2017) (citing similar cases); *Des Roches v. Cal. Physicians' Serv.*, 320 F.R.D. 486, 509 (N.D. Cal. 2017) ("[T]here is substantial support for Plaintiffs' argument that a 'reprocessing' injunction is an appropriate basis for class certification under Rule 23(b)(2)"); *Hendricks*, 344 F.R.D. at 246–47 (rejecting similar arguments about the incompatibility of reprocessing with class certification under Rule 23(b)(1) and (b)(2)); *Doe v.*

[5] The fact that reprocessing relief may result in the payment of benefits does not transform it into monetary relief. *Pauma Band of Luiseno Mission Indians of the Pauma & Yuina Reservation v. California*, 813 F.3d 1155, n.19 (9th Cir. 2015) ("equitable relief, which may take the form of money, is different than monetary damages…"); *Johnson v. Shalala*, 2 F.3d 918, 921 (9th Cir. 1993) (claims seeking "invalidation of a rule used to determine eligibility for benefits" did not amount to claim for the underlying benefits themselves).

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Ladapo, No. 4:23-cv-00114-RH-MAH, Dkt. No. 166 (*App. 1*).[6] (Permitting class certification, holding that "[i]f this action results in a ruling that the challenged statute and rules [excluding access to gender-affirming medical care] are unconstitutional, the individual class members will be able to seek individualized medical care….").

E. The Relief Sought by Plaintiff Class is "Final."

BCBSIL argues that the declaratory and injunctive relief sought against BCBSIL is not "final" because an injunctive order requiring reprocessing and payment by BCBSIL does not bind non-party employers to reimburse BCBSIL for the cost of class members' approved claims.[7] Dkt. No. 179 at 7. The fact that BCBSIL may have to take action, on its own, to obtain reimbursement from third parties does not make the injunctive relief sought any less "final" as between BCBSIL and the Class.

In sum, BCBSIL has an independent duty not to discriminate under Section 1557. BCBSIL is responsible to ensure that it complies with the law in all of its activities, including when acting as a TPA. Since the Court has concluded that BCBSIL discriminates on the basis of sex when it administers the Exclusions, even at the request of an employer, BCBSIL is responsible for the required remedy for its illegal actions.

If BCBSIL is ordered to administer class members' pre-service requests and post-service claims without the Exclusions, consistent with its standard contracts, BCBSIL must pay all valid and approved claims and then decide whether to seek reimbursement from the relevant

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[6] The *Doe v. Lapado* decision has not been published on LEXIS as of Friday October 20, 2023, so the actual order is attached as *Appendix 1*.

[7] *Takeda v. Nw. Nat. Life Ins. Co.*, 765 F.2d 815 (9th Cir. 1985), cited by BCBSIL at Dkt. No. 179 at 6, is inapplicable. The plan administrator in *Takeda* was a necessary party because it was unclear whether the plan administrator or the TPA made the decision at issue in the case. *Id.* at 820. Here, BCBSIL agreed to include the Exclusions in the plan design and actually administered the Exclusions, conduct that the Court concluded is illegal discrimination. The non-party employers are not necessary parties. *See Carr v. United Healthcare Servs.*, 2016 U.S. Dist. LEXIS 182561, at *9 (W.D. Wash. May 31, 2016) (Denying motion by defendant TPA to join employer as necessary party even when an indemnity agreement was in place).

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employers. Dkt. No. 160-1, § 15.3 and *Exh. 2*, § 6; Dkt No. 160-2 at 9. As a practical matter, BCBSIL may also obtain such reimbursement pursuant to the indemnification agreements that BCBSIL put in place. Dkt. No. 160-3 at 131:14–133:3. But the fact that BCBSIL may later pursue a third party for its losses if it decides to seek such reimbursement does not render the proposed injunctive relief any less "final." So long as BCBSIL complies with the Court's declaratory and injunctive relief, there is nothing further for the Court to adjudicate the claim in this case, rendering the decision "final." *See, e.g., Des Roches*, 320 F.R.D. at 510 (distinguishing *Kartman v. State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 886 (7th Cir. 2011), relied upon by BCBSIL).

F. BCBSIL's Other Arguments.

BCBSIL argues that the Class should be decertified, apart from the Ninth Circuit's recent holding in *Wit 3*. Dkt. No. 179 at 7, citing to its previous briefing at Dkt. No. 156. The Court has repeatedly rejected these arguments and should do so again. *See* Dkt. Nos. 113, 143.

III. CONCLUSION

The Court should order the proposed classwide declaratory, equitable, and injunctive relief, as well as nominal damages for C.P. and Patricia Pritchard.

DATED: October 20, 2023.

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