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The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E.S., by and through her parents, R.S. and J.S.,
and JODI STERNOFF, both on their own
behalf, and on behalf of all similarly situated
individuals,

Plaintiffs,

v.

REGENCE BLUESHIELD; and CAMBIA
HEALTH SOLUTIONS, INC., f/k/a THE
REGENCE GROUP,

Defendants.

NO. 2:17-cv-1609-RAJ

**AMENDED JOINT STATUS
REPORT AND DISCOVERY PLAN**

I. NATURE AND COMPLEXITY OF CASE

Plaintiffs' Statement: Plaintiffs E.S., by and through her parents R.S. and J.S., and Jodi Sternoff bring a class action complaint, on their own behalf and on behalf of similarly situated individuals, alleging that Defendants violated Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116 and discriminated on the basis of disability, when they designed, issued and administered health insurance policies that categorically excluded all benefits for treatment of her disability, hearing loss (except for coverage of cochlear implants). Plaintiffs, on behalf of the proposed class, seek injunctive relief,

1 classwide reprocessing and payment of claims, damages and other relief as may be
2 granted by the Court.

3 Plaintiffs do not anticipate that this case will involve significant factual disputes
4 but will require discovery into Regence's coverage of lack thereof related to hearing aids,
5 and will involve expert testimony. Plaintiffs expect this case to be moderately complex.

6 **Defendants' Statement:** Defendants object to the above-stated factual and legal
7 assertions. Defendants, however, do agree that this case presents a novel legal theory.
8 For that reason, and in light of the ramifications of this case on Plaintiffs as well as the
9 putative class members, if a motion to dismiss does not resolve this matter, Defendants
10 believe this case will involve significant court involvement as it will require extensive
11 motion practice.

12 II. DEADLINE FOR JOINING ADDITIONAL PARTIES

13 The parties propose that the deadline for joining additional parties should be
14 June 7, 2024.

15 III. MAGISTRATE JUDGE

16 No, the parties do not agree that a Magistrate Judge may conduct proceedings.

17 IV. PROPOSED DISCOVERY PLAN

18 The parties held an FRCP 26(f) conference on December 14, 2017 and on March 29,
19 2024.

20 A. Initial Disclosures

21 The parties provided their FRCP 26(a) initial disclosures on December 22, 2017
22 and will update those disclosures by May 1, 2024.

23 B. Discovery Subjects, Timing and Phases

24 The parties agree that discovery should not be phased.

25 **Plaintiffs' Statement:** Discovery will include Defendants' policies, practices and
26 procedures related to its Hearing Loss exclusion, their review of these policies, practices

1 and procedures in light of Section 1557 and the assurances provided to the federal
2 government of compliance with Section 1557; Defendants' communications with federal
3 and state governmental agencies regarding its compliance with Section 1557 and its
4 Hearing Loss exclusion, Defendants' coverage of treatment, medical equipment and
5 prostheses related to Hearing Loss, among other subjects. It will also include discovery
6 related to Defendants' coverage or lack thereof of the named Plaintiffs' services and
7 equipment to treat their hearing loss, as well as that of other putative class members.
8 Discovery will be taken of both parties' experts and rebuttal witnesses.

9 **Defendants' Statement:** Defendants intend to seek discovery on Plaintiffs'
10 communications with Defendants, Plaintiffs' communications with providers and third
11 parties related to the issues in this case, the nature of Plaintiffs' disorder, Plaintiffs'
12 insurance coverage, the treatment of the conditions at issue, and other insurers'
13 approach to similar topics, among other topics.

14 **C. Electronically Stored Information**

15 The parties agree to adopt the Model Agreement Regarding Discovery of
16 Electronically Stored Information in Civil Litigation should it be necessary.

17 **D. Privilege Issues**

18 The parties have not identified any privilege issues at this time. The parties agree
19 to handle inadvertent production of privileged information as described in the Model
20 Stipulated Protective Order, ¶9.

21 **E. Discovery Limitations**

22 The parties do not agree to any limitations on discovery beyond those provided
23 in the local rules at this time.

24 **F. Discovery Related Orders**

25 At this time, the parties do not believe that any discovery related orders are
26 necessary.

V. ISSUES IN LCR 26(F)(1)

A. Prompt Case Resolution

The parties agree that this case cannot be promptly resolved or settled.

B. ADR

The parties are willing to explore mediation of the dispute pursuant to Local Civil Rule 39.1(c), as described below.

C. Related Cases

The parties are not aware of any related cases. A class action lawsuit asserting similar claims brought by different plaintiffs against different defendants was recently settled. *See Schmitt v. Kaiser*, No. 2:17-cv-1611.

D. Discovery Management

The parties do not anticipate any additional discovery management issues at this time.

E. Anticipated Discovery Sought

Please see Answer provided in IV.B.

F. Phasing of Motions

Parties' Joint Statement: The parties have agreed to the following case schedule:

Motion for Class Certification:	November 8, 2024
Initial Expert Witness Reports:	January 10, 2025
Rebuttal Expert Witness Reports:	February 7, 2025
Discovery Cutoff:	March 7, 2025
Dispositive Motions:	April 4, 2025
Motions in Limine:	May 2, 2025
Agreed Pretrial Order:	June 16, 2025
Trial Briefs and Trial Exhibits:	June 23, 2025
Trial:	July 7, 2025

1 **G. Preservation of Discoverable Information**

2 The parties have not identified any preliminary issues relating to the preservation
3 of discoverable information.

4 **H. Privilege Issues**

5 The parties agree to handle inadvertent production of privileged information as
6 described in the Model Stipulated Protective Order, ¶9.

7 **I. Model Protocol for Discovery of ESI**

8 The parties agree to adopt the Model Protocol for Discovery of ESI, if necessary.

9 **J. Alternatives to the Model Protocol**

10 No alternative is needed at this time.

11 **VI. DISCOVERY COMPLETED**

12 The parties agree that discovery can be completed by March 7, 2025.

13 **VII. BIFURCATION**

14 The parties believe that the case may be bifurcated by considering liability before
15 damages issues.

16 **VIII. ADR**

17 The parties are willing to explore mediation of the dispute pursuant to Local Civil
18 Rule 39.1 (c), although mediation would be most productive after anticipated motions
19 for summary judgment on key legal issues in the case. The parties do not agree to use
20 the Individualized Trial Program set forth in Local Civil Rule 39.2.

21 **IX. SIMPLIFYING THE CASE**

22 The parties have no suggestions for shortening or simplifying the case at this time.

23 **X. TRIAL DATE**

24 This matter will be ready for trial on July 7, 2025.

25 **XI. JURY OR NON-JURY**

26 This case will be tried before a Jury.

XII. TRIAL DAYS REQUIRED

A 6-day trial should be adequate.

XIII. TRIAL COUNSEL

Counsel for Plaintiffs:

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XIV. SCHEDLING COMPLICATIONS

The parties are not aware of any scheduling complications at this time.

XV. ADDITIONAL SERVICE

All Defendants have been served.

XVI. SCHEDULING CONFERENCE

The parties agree that no scheduling conference is required.

XVII. CORPORATE DISCLOSURE STATEMENT

Defendants filed their corporate disclosure statements on December 22, 2017.

XVIII. SERVICE ON DEFENDANTS

Plaintiffs have served all Defendants.

1 DATED: April 3, 2024.

2
3 STOEL RIVES LLP

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER

4 /s/ Stephen H. Galloway

/s/ Eleanor Hamburger

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