

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**IN RE: BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION
(MDL No.: 2406)**

Master File No.: 2:13-CV-20000-RDP

This document relates to all cases.

**ORDER SETTING BRIEFING SCHEDULE
AND ESTABLISHING CERTAIN DISCOVERY PROCEDURES**

Before the court is the Parties' July 19, 2013 Joint Status Report Regarding Motion to Dismiss Briefing Schedule (the "Joint Report"). This matter was heard at a status conference on August 21, 2013.

After carefully considering the Joint Report, the proposed briefing schedules of the Parties, and the arguments advanced by the Parties at the August 21, 2013 status conference, the court hereby **ORDERS** as follows regarding the briefing schedule and early discovery:

1. Defendants **SHALL** file their Motions to Dismiss **on or before September 30, 2013**.
2. Plaintiffs **SHALL** file their Oppositions to Defendants' Motions to Dismiss **on or before January 15, 2014**.
3. Defendants **SHALL** file their Reply Briefs in support of their Motions to Dismiss **on or before March 6, 2014**.
4. Initial briefs (for all Defendants and both Plaintiff tracks) are limited to 150 pages and replies are limited to 75 pages. As discussed at the August 21, 2013 hearing, Defendants intend to file two principal, non-duplicative briefs. The 37 individual Plans reserve the right to file non-

duplicative briefs on any issues particular to them, with initial briefs (of a Plan and both Plaintiff tracks) limited to 20 pages and replies limited to 10 pages.

5. **Within thirty days of this order**, the Parties **SHALL** meet and confer in person about potential evidence preservation, including the types of data and information sources that the Parties are preserving, time periods, types of custodians and the information referenced in the Parties' lists of categories, the scope of preservation going forward, e-discovery protocols, terms of a Protective Order (collectively "the foregoing topics"), and Rule 26(f) disclosures and conferences. Any party may present any dispute(s) that arise pursuant to this paragraph and relating to the foregoing topics or 26(f) disclosure and conference matters related to the foregoing topics, to the court at any time **after thirty (30) days of this Order**.

6. **Within ninety days of this order**, for the time period covered by the applicable statute of limitations, the Association **SHALL**, without a request, produce the following documents:

a. The License Agreements between each of the Individual Blue Plans and Blue Cross and Blue Shield Association ("BCBSA") (*i.e.*, both Blue Cross License Agreements and Blue Shield License Agreements).

b. BCBSA Membership Standards Applicable to Regular Members.

c. BCBSA Guidelines to Administer Membership Standards Applicable to Regular Members.

d. List of members of BCBSA's Brand Enhancement and Protection Committee (the new name for the Plan Performance and Financial Standards Committee).

e. Triennial membership compliance letters.

7. The Parties **SHALL** hold a preliminary Rule 26(f) conference on any remaining Rule 26(f) issues after the completion of discussions on preservation, e-discovery protocol, and terms of a Protective Order; provided, however, the Rule 26(f) conference **SHALL** occur **no later than within sixty days of this order**. The parties **SHALL** present to the court a Preliminary Rule 16 Order at the conclusion of that conference. The Preliminary Rule 16 Order **SHALL** reflect the limited discovery that will be permitted at this stage of the case, and report on the Parties' discussions about how to best address the issue of sampling of documents which may be produced in this case, as well as suitable alternatives to sampling.¹

8. **On or before June 1, 2014** (eleven months from the date the Consolidated Amended Complaints were filed), the Parties **SHALL** file a status report with the court regarding a proposed discovery schedule for the remainder of discovery. Except as provided for in this Order, discovery is otherwise **STAYED** until this date.

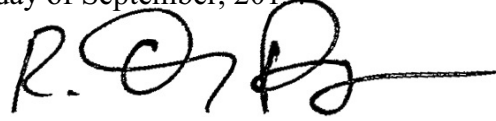
9. While the discovery stay remains in place, the Parties may exchange RFPs related to three categories of documents: electronically stored information protocols; organizational charts; and data architecture. Objections to the RFPs will be exchanged by the parties. However, such objections **SHALL** be due **no earlier than forty-five (45) days after the date** on which Defendants file their Motions to Dismiss. The Parties agree that a Party receiving the RFPs may need more than forty-five days to provide objections. The RFP sponsoring Party may, as appropriate, raise issues regarding discovery in these categories with the court.

¹ The court understands this may be a lengthy process but asks the parties to provide an initial report on their discussions.

10. Prior to raising any issue with the court, the Parties **SHALL** meet and confer as to any challenged objections to the RFPs.

The court reserves the right to modify the terms of this Order.²

DONE and **ORDERED** this 3rd day of September, 2013

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

² The court commends counsel for substantially narrowing their disputes in this matter prior to the hearing. The court did not observe this same effort during the Parties' review of the draft order, and encourages the Parties to work in a collaborative manner in the future.