

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

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IN RE: BLUE CROSS BLUE SHIELD) **Master File No.: 2:13-CV-20000-RDP**
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ANTITRUST LITIGATION) This document relates to all cases.
(MDL No.: 2406))
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**PROTECTIVE ORDER UNDER FED. R. EVID. 502(d) REGARDING NON-WAIVER
OF INFORMATION SUBJECT TO ATTORNEY-CLIENT PRIVILEGE OR WORK
PRODUCT PROTECTION**

1. Pursuant to the agreement of the Parties under Fed. R. Evid. 502(e) and by Protective Order (“Order”) of this Court under Fed. R. Evid. 502(d), no disclosure, production, or exchange of Information¹ in connection with this Proceeding shall constitute a waiver of attorney-client privilege or of any work product protection in this or any other federal or state proceeding under any circumstances.
2. This Order applies to all documents and electronically stored information (as those terms are used in Fed. R. Civ. P. 34), the information contained therein, and all other information produced, disclosed, or exchanged by the Parties² in connection with this

¹ As defined in Paragraph 2 below.

² “Party” includes any current or future party to this Proceeding, and all of the underlying actions consolidated herein, as the term “Party” is used in the Federal Rules of Civil Procedure. A

Proceeding, whether revealed in a document, electronically stored information, deposition, other testimony, discovery response or otherwise (collectively, “Information”). This Order should be interpreted to prevent waiver to the broadest extent possible under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

3. This Order is entered pursuant to Federal Rule of Civil Procedure 26(c)(1) and is intended to protect the Parties to the Proceeding, to the fullest extent permissible by law, against any unintended waiver of the attorney-client privilege and/or the work product protection that might otherwise arise from the disclosure of privileged or protected Information. This Order is intended to override any contrary law or presumptions, if and as applicable and permissible. The Parties’ agreement to this Order, and compliance with its terms, shall be understood, for all purposes within and outside this Proceeding, to constitute reasonable and prompt³ efforts to preserve privileges and protections from discovery in respect to any disclosed privileged or protected Information.
4. This Order applies regardless of whether the Information describes or relates to actions taken in this Proceeding, in prior or separate proceedings, or in other non-litigation matters.
5. Upon learning of the production of privileged or protected Information, the Party making a production (or “Producing Party”) shall promptly give all counsel of record written

“Party” includes that party’s representative corporate parents, subsidiaries, divisions, and affiliates, as well as that party’s respective attorneys, agents, vendors, experts, representatives, officers, and employees.

³ For the purpose of this order, “prompt” and “promptly” are defined as “within ten (10) business days.”

notice of the production. The notice shall identify the Information that was produced (including the format of the production—e.g., paper, electronically stored information) and the date(s) the Information was produced. If the Producing Party claims that only a portion of a document, electronically stored information or tangible thing produced is privileged or protected Information, the Producing Party shall also provide a new copy of the Information with the allegedly privileged or protected portions redacted. The Producing Party need not provide any explanation or evidence regarding the reasonableness of efforts taken to prevent such production and the party receiving Information (or “Receiving Party”) agrees to not challenge the reasonableness of such efforts.

6. Upon receiving notice of a production or upon determining that Information it received is known to be privileged or protected in whole or in part, the Receiving Party must promptly return, sequester and/or destroy the Information and all copies and destroy any notes that reproduce, copy or otherwise disclose the substance of the privileged or work product-protected Information. If a Receiving Party disputes or believes that it might dispute the claim of privilege or protection, the Receiving Party may retain a copy of the document, record, or data to evaluate such claim of privilege or protection, and the parties shall cooperate to obtain the Court’s decision regarding such claim of privilege or protection. The Receiving Party may not use or disclose the privileged or work product-protected Information unless this Court has ruled that the Information is not privileged or protected by the work product doctrine. If the Receiving Party disclosed the privileged or work product-protected Information before being notified, it must take reasonable steps

to retrieve and prevent further use or distribution of such Information. This duty expires if this Court rules that the Information is not privileged or protected by the work product doctrine.

7. A Receiving Party is under a good faith obligation to promptly alert the Producing Party if Information that is produced, disclosed or exhibited, or communicated by a Producing Party appears to be privileged or work product-protected either on its face or in light of facts known to the Receiving Party.
8. To the extent that any Party obtains any privileged Information through disclosure or communications, such Information may not be submitted to the Court or presented for admission into evidence or sought in discovery by that Party in this Proceeding or in any other proceeding or action.
9. If the Receiving Party challenges a claim that Information disclosed, exchanged, produced, or discussed is privileged or work product-protected, the Receiving Party may, in connection with a good-faith challenge, make reference to the contents of the Information in any submission to the Court, so long as such filing is made under seal. If requested by the Receiving Party, the Producing Party shall provide the Information at issue to the Court for *in camera* review unless otherwise ordered by the Court.
10. If the Court sustains the claim that the Information disclosed, exchanged, produced, or discussed is privileged or work product-protected, the Receiving Party must, within ten (10) days of the Court's order, promptly return and/or destroy the Information and all copies and destroy any notes that reproduce, copy or otherwise disclose the substance of

the privileged or work product-protected Information. The Receiving Party shall advise the Producing Party in writing of the return and/or destruction.

11. Nothing in this Order shall be construed to require the production of any Information or communication that a Party contends is protected from disclosure by the attorney-client privilege and/or the work product doctrine.

DONE and **ORDERED** this 8th day of November, 2013.

A handwritten signature in black ink, appearing to read "R. David Proctor", with a long horizontal stroke extending to the right.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE