

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**BLUECROSS BLUESHIELD
OF TENNESSEE, INC.,**

Plaintiff,

Case No.

v.

**LAURIE S. LEE, in her official capacity as
Executive Director of the Department of
Finance and Administration
(Benefits Administration) for the
State of Tennessee,**

and

**JOHN AND JANE DOES 1-100, in their
official capacities as employees of the State
of Tennessee,**

Defendants.

COMPLAINT

Plaintiff BlueCross BlueShield of Tennessee, Inc., (hereinafter “BCBST” or Plaintiff) brings this Complaint against Defendant Laurie S. Lee, in her official capacity as Executive Director of the Department of Finance and Administration (Benefits Administration) for the State of Tennessee, and John and Jane Does 1-100, in their official capacities as employees of the State of Tennessee, for prospective, equitable injunctive relief to prevent ongoing violations of federal law, to wit, the

4811-3614-2766.1

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Sherman Act and the 5th Amendment to the United States Constitution. In support of its claims, BCBST states as follows:

INTRODUCTION AND BACKGROUND

1. This is an action under the Sherman Act and the United States Constitution to enjoin disclosure, by individual employees of the State of Tennessee, acting in their official capacities, of extremely competitively sensitive, valuable, confidential, proprietary, and trade secret information (hereinafter “Confidential Information”) that BCBST provided to the State of Tennessee solely in connection with BCBST performing its obligations under contracts with the State.

2. Specifically, the Defendant state employees (collectively referred to herein as the “State Employee Defendants”) have received requests from Martin Daniel, a member of the Tennessee House of Representatives, for BCBST’s Confidential Information purportedly pursuant to Tennessee’s Open Records Laws and/or other “sunshine” laws designed to foster government transparency (generally collectively referred to as “Open Record Laws”). The Confidential Information is a trade secret with recognized proprietary value.

3. The State Employee Defendants have entered into an agreement with Daniel to produce Confidential Information to him belonging to BCBST (and other insurers that contract with the State) on or about December 16, 2019 purportedly pursuant to these Open Record Laws.

4. Upon information and belief, Daniel has advanced these requests under the Open Record Laws at the behest of individuals and/or businesses who are attempting to (i) interfere with and impede BCBST's legitimately held position as a contractor who administers the State's health care benefits program (a position BCBST earned through a competitive bidding process), (ii) promote anticompetitive coordination amongst BCBST's actual and potential competitors, (iii) facilitate anticompetitive coordination by health care vendors and providers, and (iv) otherwise destroy efficiencies in the markets for health care products and services to the detriment of third-party payors, including the State, other employer-sponsored group health plans, and consumers.

5. The planned disclosure of BCBST's Confidential Information to Daniel is not permitted under BCBST's contracts with the State or Tennessee's Open Records Laws.

6. The planned disclosure also violates Section 1 of the Sherman Act and the Fifth Amendment to the Constitution. The disclosure will not protect or benefit the public in any manner. On the contrary, it will stifle competition, harm consumers, and cause permanent damage to the health care markets in Tennessee, including by disrupting the trust that providers place in a confidential contract negotiation process. The disclosure also threatens the State's ability to procure competitively priced contracts from vendors in any industry or for any service

because vendors will be reluctant to bid if their pricing information can be released to any person under an open records request.

7. BCBST is a provider of health care coverage and financing solutions to individuals, businesses, and families in the State of Tennessee, with the mission to make Tennessee healthier through affordable health care coverage.

8. In furtherance of this mission, BCBST contracts with the State of Tennessee to administer health and wellness plans sponsored by the State of Tennessee. These are plans provided to State of Tennessee employees and their families. In the course of fulfilling its obligations under its contracts with the State of Tennessee, BCBST is required by the State to provide extremely sensitive, confidential, and proprietary data to the State of Tennessee.

9. The Confidential Information includes Protected Health Information (“PHI”) (as such term is defined and protected by the Health Insurance Portability Act of 1996, as amended, and its implementing regulations (collectively, “HIPAA”)) of individuals covered by the State of Tennessee’s health and wellness plans.

10. The Confidential Information also includes BCBST’s proprietary and commercially sensitive information, the protection of which is vital to BCBST maintaining a competitive position in the rapidly shifting health care markets.

11. A prime example of Confidential Information provided to the State of Tennessee is the “allowable amount” BCBST pays to specific health care providers

based on contract negotiations. The “allowable amount” shows incredibly sensitive business information because it displays the payment rate negotiated by BCBST with each provider for services rendered to BCBST members. In addition, BCBST also provides to the State other competitively sensitive pricing and cost information on a granular level as described further herein.

12. This information was never intended to be and is not publicly disclosed. Providers negotiate rates with BCBST on the expectation that these rates will remain confidential and BCBST protects against disclosure by contract. Indeed, public disclosure of this information would irreparably harm BCBST’s competitive position as well as overall competition in the health care markets, as the disclosure would allow competitors and providers to obtain confidential business information not otherwise publicly available that could facilitate coordination on prices and other dimensions of competition.

13. Representative Daniel has requested that individual employees working for the State of Tennessee disclose BCBST (and other insurers’) Confidential Information. Upon information and belief, these requests are being done at the behest of individuals and businesses with anti-competitive motivations.

14. There is no legitimate, public interest being served by Daniel’s requests; these requests are, upon information and belief, driven by actors with anti-competitive purposes who wish to, on the one hand, undermine BCBST’s business

model and market position by trying to obtain extremely competitively sensitive information that these BCBST competitors would otherwise not be in the position to obtain, and on the other hand to facilitate collusion based on such information. If BCBST's Confidential Information is disclosed, those anti-competitive effects likely will materialize.

15. In violation of the Sherman Act and BCBST's rights under the United States Constitution, the State Employee Defendants have agreed to provide the requested data.

16. In response to Daniel's requests, the State Employee Defendants have advised BCBST that they will disclose an enormous quantity of BCBST's Confidential Information on or about December 16, 2019. Such disclosure, by itself, will also violate the Sherman Act and the Fifth Amendment when it is carried out.

17. The State Employee Defendants have also attempted to strike from BCBST's existing contracts language that protects BCBST's Confidential Information.

18. This planned disclosure of Confidential Information by the State Employee Defendants is not consistent with the language or spirit of the Open Records Laws of the State. As the State Employee Defendants have implicitly recognized, the disclosure of the Confidential Information conflicts with the State's

obligations under its contracts with BCBST. But, there are other fora for those disputes.

19. In this case, the important issue is that this disclosure would be a clear violation of the Sherman Act and BCBST's rights under the United States Constitution. The harm to BCBST and the public at large from the disclosure will also be considerable:

- BCBST will clearly be injured by competitors, including the third parties behind Daniel's request, learning about BCBST's detailed pricing and cost information (including, but not limited to, the "allowable amount" information) because those competitors will now be able to use to this competitively sensitive information to bid differently and thus have an advantage over BCBST in the bidding process that these competitors would not have otherwise had.
- This will stifle competition on the merits, impede BCBST's ability to effectively compete in the market, and disadvantage BCBST's market position and interfere with its customer relationships. It will also interfere with BCBST's relationship with providers, who reasonably anticipated negotiating payment rates for services in a confidential environment.

- The disclosure of this information will give BCBST's actual and potential competitors for the administration of health care coverage and financing competitively sensitive information on BCBST's pricing and cost, which these competitors would otherwise not have access to, and thus a basis to collude to set prices and quality levels for such services.
- Similarly, the disclosure of this information will give providers competitively sensitive information on BCBST's pricing in the marketplace, which these providers would otherwise not have access to, and thus a basis to collude to set higher pricing and lower quality for medical and other health care services.
- These collusions will raise costs to the State and its members as well as other customers and members of BCBST. There will also likely be ripple effects. That is, based on the same disclosed Confidential Information, other insurers and health care providers can also collectively set higher prices and lower quality for services across the board outside the State account.
- Disclosure of the Confidential Information will also likely disincentivize BCBST and other providers of health care services from aggressively competing for the State's business, which may restrict

output and harm the State as well as competition and consumers generally.

- If the “allowable amount” and other competitively sensitive information becomes public, that would create an open environment for fraudsters to review the data to identify potential targets for fraudulent schemes.

Therefore, BCBST brings this Complaint for prospective, equitable injunctive relief to prevent this planned disclosure of Confidential Information.

PARTIES, JURISDICTION AND VENUE

20. BCBST is a provider of health care coverage and financing solutions, including health insurance, to individuals, families, governmental entities, and businesses in the State of Tennessee. The corporate headquarters of BCBST are located at 1 Cameron Hill Circle, Chattanooga, Tennessee 37402.

21. Defendant Laurie S. Lee is sued in her official capacity as Executive Director of the Department of Finance and Administration, Benefits Administration, for the State of Tennessee. Upon information and belief, Ms. Lee can be served with process at 312 Rosa L. Parks Avenue, Suite 1900, William R. Snodgrass Tennessee Tower, Nashville, Tennessee, 37243.

22. Defendants John and Jane Does 1-100 are as yet unidentified individual employees of the State of Tennessee, operating in their official capacity, and

responsible for all aspects of contracting with BCBST and responding to the Open Records Laws requests at issue in this matter, from consideration of the request and evaluating its source, agreeing what information will be produced, and disseminating that information to the requesting party. While additional discovery is needed to identify the precise individuals, Seannalyn Brandmeir, Kendra Gipson, Andrea Dowdy, Lucian Geise, Mark Cherpak, and Scott McAnally are all employees of the State of Tennessee, who, upon information and belief, are involved in the ultimate decision whether and under what circumstances to disclose the Confidential Information at issue in this matter.

23. This Court has subject matter jurisdiction over this case because the matter raises several federal questions, and thus the Court has federal question jurisdiction pursuant to 28 U.S.C. §1331. Jurisdiction is also conferred by 28 U.S.C. §§1337, 1343, and 42 U.S.C. §1983.

24. There is personal jurisdiction over the Defendants, as they work and perform their official duties in this District, and therefore it is reasonable for them to anticipate being haled into court in this District.

25. This Court is the appropriate venue for this dispute, as the primary challenged activity at issue -- the agreement to disseminate BCBST's Confidential Information -- is planned to occur from this District and the agreement in restraint

of trade and in violation of BCBST's constitutional rights has occurred, at least in substantial part, in this District. *See* 28 U.S.C. §1391 and 15 U.S.C. § 22.

FACTUAL ALLEGATIONS

BCBST'S Contract with the State and Confidentiality

26. BCBST is a provider of health care and financing solutions, including health insurance, in the State of Tennessee, providing or administering health care coverage to thousands of individuals, families, governmental entities, and businesses throughout the State of Tennessee.

27. In furtherance of that mission, BCBST contracts with the State of Tennessee to administer the health care coverage offered by the State of Tennessee to its employees and their dependents (collectively, "State Members"). Under these contracts, BCBST provides a full range of administrative services to support the coverage, including access to a network of contracted providers, customer/member relations, and claims processing.

28. BCBST has several, active contracts with the State to administer the State of Tennessee's health care coverage.

29. These contracts all require that BCBST will provide the State with Confidential Information throughout the course of the contract. This is Confidential Information that BCBST has developed through its experience in the marketplace and represents BCBST's carefully developed and wrought business property and

trade secrets, and its existence and its secrecy afford BCBST a distinct competitive advantage. BCBST maintains the confidentiality of this information in the ordinary course of business.

30. BCBST's contracts with the State of Tennessee further provide that the State will protect this Confidential Information from improper and unauthorized disclosure, stating "strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law."

31. Consistent with this language, BCBST goes to great lengths to protect its Confidential Information, including but not limited to executing bilateral non-disclosure agreements with counterparties that receive BCBST's data and other information, as part of its obligations under its contracts and BCBST's commitment to ensure that this competitively critical information does not reach those who would use it for illicit and anticompetitive purposes.

32. The Confidential Information, among many other things, indicates the amounts BCBST pays to specific health care providers for services furnished to State Members, the methodology for how BCBST determines such payment rates, and other extremely confidential business data that no reasonable business would ever agree to be disclosed to the general public because of how detrimental it would be to the business's commercial position.

33. For example, it would be highly detrimental to BCBST to have the amounts it pays to specific health care providers for services furnished to State Members disclosed. Public access to this Confidential Information would permit BCBST's actual and potential competitors to alter their own pricing proposals when competing against BCBST for the State's (and other group health plans') business, providing these competitors an unearned and undeserved competitive advantage that they would not otherwise have and an opportunity to (i) counter BCBST's business model, (ii) interfere with its customer relationships, and (iii) disadvantage BCBST in competition for non-State accounts. Further, the disclosure of this payment-to-provider-specific payment information will result in collusion on prices and other metrics of competition by those actual and potential competitors, as well as health care providers in several health care markets. Such collusion will harm BCBST as well as competition, payors, and consumers in the market generally.

Representative Daniel's Open Record Request

34. Representative Daniel has advanced a request purportedly under the Open Records Laws to the State Employee Defendants. This request seeks a considerable amount of BCBST's Confidential Information, including information on the "allowable amounts" that BCBST pays to providers for services.

35. Daniel and the State Employee Defendants have agreed that the State Employee Defendants will furnish Daniel with this voluminous quantity of BCBST's Confidential Information on or about December 16, 2019.

36. BCBST has repeatedly urged the State Employee Defendants, through numerous conversations and correspondence, not to disclose the Confidential Information because of the harm it would cause to BCBST and the health care markets, but BCBST has not been able to prevail on the State Employee Defendants.

37. Moreover, on November 25, 2019, Seannalyn Brandmeir, who works in the Procurement and Contracts Department of the Tennessee Department of Finance and Administration, e-mailed BCBST representatives seeking to remove, on a prospective basis, the existing contractual obligation on the part of the State to protect the confidentiality of information that BCBST has identified as confidential and proprietary. BCBST refused this request as, *inter alia*, inconsistent with BCBST's expectations from when it initially contracted with the State, as to the parties' rights and obligations under the contract.

38. The State Employee Defendants are apparently seeking to remove all impediments they can identify to disclosing BCBST's Confidential Information.

39. Upon information and belief, this disclosure to Representative Daniel will include BCBST Confidential Information regarding, among other things, how much health care providers charged Tennessee state employees and their families

(“State Members”) for services provided to them (each provider’s so-called “billed charges”), the amount the provider is contractually entitled to receive from BCBST (again, the key “allowable amount”), the portion of the allowable amount for which the State Member is responsible as a deductible or other cost-sharing obligation, the portion of the allowable amount paid by BCBST on behalf of the State, along with information regarding when payments were made, the services provided to a State Member, the provider treating the State Member, where the services occurred, the State Members’ diagnosis and codes (i.e. for claims submissions), along with legions of other data.

40. Disclosure of this BCBST Confidential Information, particularly on the granular level as the State Employee Defendants intend, and even if disclosed on an aggregated basis, will, again, result in BCBST’s competitors and health care providers having the ability to collude to drive up prices, diminish the quality and scope of health care services, and allow actual and potential competitors of BCBST to bid differently to BCBST’s disadvantage based information these competitors are not entitled to. It will harm competition, consumers, payors (including the State of Tennessee and other employer-sponsored health plans), and BCBST’s competitive position, as described throughout this pleading.

41. The proposed disclosure is a considerable threat to expose the confidential business model of a private organization, something not remotely conceived of by any Open Record Law.

THE SHERMAN ACT AND ANTI-COMPETITIVE CONDUCT

42. Through its planned disclosure of BCBST's Confidential Information, the State Employee Defendants intend to make BCBST's proprietary data, shared with the State in furtherance of a contractual obligation, public data.

43. This is highly anti-competitive, as the Federal Trade Commission (FTC) has recognized. The FTC is the independent, federal agency charged with protecting competition and safeguarding the interests of consumers.

44. In 2015, the FTC wrote a lengthy letter to two Minnesota House of Representatives members, who were involved in the consideration of a state law that would have potentially required health plans administering health care coverage in Minnesota to disclose "competitively sensitive information, including information related to price and cost."

45. In that 2015 letter, the FTC discussed, in detail, the two primary harms that come from the public release of this type of competitively sensitive data: one, it permits improper collusion and chills competition, and, two, it drives up cost. These are precisely some of the concerns present here if the BCBST Confidential Information is disclosed.

46. The FTC, supported by the U.S. Department of Justice's Antitrust Division, concluded that the release of price information for health care services should only be permitted under limited circumstances that guarantee that one health care entity's pricing information is not disclosed to the marketplace. Otherwise, the FTC said, the exchange of information occurs outside of the "antitrust safety zone" and there is insufficient assurance that the pricing and cost data will not be used by "competing providers for discussion or coordination of provider prices or costs."

47. In summary, the FTC has broadly advised the states and other market actors that "public disclosure of [health care market] information could reduce competition and increase prices to consumers."

48. Further, the FTC has stated that it and the U.S. Department of Justice are particularly concerned when "information exchanges or disclosures promote the sharing of sensitive information among competitors," because it facilitates collusion, market allocation and other conduct that harms competition in the health care marketplace.

49. The FTC also has recognized that "fees, discounts, and other pricing terms" are "typically negotiated in confidence" and disclosure of those terms to the public undermines the broader goals of reducing costs and improving value in the health care market place.

50. In addition to recognizing the anticompetitive effects of disclosing competitively sensitive health plan information, the FTC also concluded that “disclosure of competitively sensitive information may enable providers to determine whether their pricing is above or below their competitors’ prices, to monitor the service offerings and output of current or potential competitors and to increase their leverage in future contract negotiations.”

51. This is precisely one of the problems that BCBST (and likely other insurers in the marketplace) will face if BCBST information is disclosed. Providers, able to access a wealth of data that they could not otherwise obtain regarding how other providers are paid, will use that information to collectively drive up their prices and reduce the quality and scope of services, to the detriment of the State, the State Members, and other BCBST employer-sponsored group health plans and members, all of whom will suffer greater premiums and cost-sharing obligations that result from higher prices for health care services. So, in addition to facilitating potential collusion among competitors offering health care coverage and administrative services, disclosing the health plans’ pricing and other competitively sensitive information can cause the health care service providers in the upstream markets to collude.

52. On the other hand, the FTC has said, “where health care providers do not know each other’s prices, providers are more likely to bid aggressively --

offering lower prices -- to ensure they are not excluded from selective networks, because exclusion could substantially decrease their service volumes and revenues.” Accordingly, disclosure of health plans’ competitive, sensitive information can harm competition by facilitating collusion in adjacent markets. And, for providers who negotiated rates with BCBST in confidence, their trust in BCBST and the process is sullied.

53. The Sherman Act is a key tool that furthers the goals of the FTC, which are to protect competition and foster a competitive marketplace.

54. Section 1 of the Sherman Act prohibits agreements that unreasonably restrain trade, including but not limited to agreements to fix prices, reduce output, or allocate markets.

55. In 1969, the United States Supreme Court found, consistent with the FTC statements in our specific context 46 years later, that the improper and unauthorized exchange of competitively sensitive information can facilitate collusion and may in itself violate Section 1 of the Sherman Act. *See, e.g., United States v. Container Corp. of Am.*, 393 U.S. 333, 335 (1969).

56. The Sherman Act likewise can be violated when competitors use a central repository or actor to collect and publish the competitively sensitive information. This applies even when the central repository is the State.

57. Here, the State's compelled, mandatory disclosure of BCBST's Confidential Information, including granular information regarding prices and costs, harms competition, payors and consumers in the following ways:

- The disclosure of BCBST's Confidential Information can enable actual and potential competitors in the health plan administration market to collude on prices and other metrics of competition, such as quality of service provided.
- Given the granular nature of the pricing information the State intends to disclose, this collusion among such competitors can be extended to adjacent markets, including the private health care insurance market. For instance, BCBST's "allowable amounts" -- the amounts that are paid to providers -- are not State-account specific; rather, they apply to non-State accounts as well. If BCBST's allowable amount data is made public, it will encourage collusion across the entire health plan administration market, as well as adjacent health care coverage markets.
- The disclosure of BCBST's Confidential Information can enable health care providers in the upstream markets to collude on prices and other metrics of competition, such as quality, to the detriment of payers including the State of Tennessee, other group health plans sponsored

by employers and governmental entities, as well as consumers. As the FTC explained, knowledge of the otherwise confidential prices will enable health care providers to coordinate their prices to keep them high, and/or reduce quality of services offered, rather than bid aggressively to obtain the business of downstream customers (like BCBST). Sensitive pricing and contracting information may enable providers to determine whether their pricing is above or below their competitors' prices, to monitor the service offerings and output of current or potential competitors, and to increase their leverage in future contract negotiations. On information and belief, the information being requested that the State intends to disclose includes, *inter alia*, charged amount, allowed amount, copayment, deductible, coinsurance, total units billed and paid, payment date and type, location of service, and a provider's network status with BCBST. This represents more than enough information for health care service providers to coordinate the availability and cost of their services, leaving consumers, customers and payors with no choice but to accept services from providers that have benchmarked and calibrated all services and prices.

- Providers contracting with BCBST do so with the understanding that their prices and rates will remain confidential; absent this assurance

there will be no expectation of confidentiality, and therefore it will become unlikely that providers will contract openly with BCBST.

- Such collusion will likely result in higher prices and lower quality to the detriment of payors and consumers.
- Rather than competing on the merits, BCBST's actual and potential competitors can and, upon information and belief will, use the information that the State Employee Defendants intend to disclose to Representative Daniel to (i) alter their prices and services offered, (ii) monitor BCBST's business strategies and model, and (iii) obtain additional long-term negotiating leverages, which impede effective competition from BCBST and disadvantage it. This anticompetitive effect will likely extend outside the State account. As explained above, the "allowable amounts" apply to both the State account and non-State accounts. Disclosure of this information will thus allow actual and potential competitors of BCBST to alter their bids against BCBST for even non-State customer accounts to BCBST's disadvantage, further discouraging merit-based competition.
- Disclosure of BCBST's Confidential Information, despite contractual provisions otherwise and despite the clear irreparable harm to competition and to BCBST, will harm competition and consumers by

disincentivizing BCBST and other competitors from vigorously competing to obtain the State's business, which may lead to reduced output to the detriment of payors and consumers. This is also one of the harms cautioned of in the FTC's letter to Minnesota's legislators above.

- Further, disclosure of the Confidential Information will irreparably harm BCBST. Once disclosed, the information cannot be undisclosed, and the people who have learned this information cannot unlearn it. A retrospective prohibition on the use of this information for competitive purposes cannot restore BCBST to its original competitive position, when its information has not been disclosed. Specifically, in practice, there is no way to make sure that the recipients of the Confidential Information will not use the information for competitive purposes. For the same reason, disclosure of BCBST's Confidential Information will irreparably harm competition and consumers in the manners described above. For example, once health care providers are aware of the Confidential Information, there is no practical way to prevent them from using that information to set the same price.
- Also, as the FTC recognized, disclosing BCBST's Confidential Information does not serve meaningful procompetitive purposes, and

any marginal benefit is likely to be outweighed by the harm to competition and to consumers. Specifically, the State, having access to this information all along, gains no additional efficiency from disclosing it. The disclosure of confidential pricing and payment information is likely to have a net-negative effect on consumers. While in theory transparency may help consumers in choosing health care, on balance the widespread publication of this information is more likely to result in upward pricing pressure and reduced opportunities for negotiated discounts. Just as consumers can react to public pricing information, so too can providers and competitors. Daniels' motivation for disclosure of this information - to assist a competitor of BCBST to position itself in the market - underscores the asymmetrical value that such information will have in the hands of providers and intermediaries vis-à-vis the public at large.

58. The disclosure of the information to the public, in addition to enabling players in the supply chain to illegally coordinate in myriad ways, such as regarding price, services, convenience, and quality, will also create a ripe environment for fraud, as fraudsters armed with this sensitive and private data will be able to use the data to identify targets for fraudulent schemes.

59. Commentators and competition scholars have long identified health care markets as ones that are especially susceptible to tacit collusive conduct. *See generally*, Susan DeSanti & Ernest Nagata, *Competitor Communications: Facilitating Practices or Invitations to Collude? An Application of Theories to Proposed Horizontal Agreements Submitted for Antitrust Review*, 63 ANTITRUST L.J. 93 (1994). Any benefit that might be derived from the public disclosure of this Confidential Information is outweighed by the significant harm that is certain to accompany the disclosure. As the FTC has explained in the Minnesota matter, “health care providers may find increased access to each other’s prices and other competitively sensitive information to be quite useful...there is a significant risk that competing providers could use this information in an anticompetitive manner to the detriment of health care consumers, public health plans, and the State itself.”

60. In sum, once BCBST’s Confidential Information is in the marketplace, any actual or potential competitor of BCBST, and any provider in the supply chain, can use the information to collude and otherwise impede effective competition in the health care markets, leading to higher prices and lower quality to the detriment of payors and consumers.

61. The State Employee Defendants, with knowledge that BCBST’s Confidential Information will be disclosed to the public, have entered into an agreement in restraint of trade with Representative Daniel, and, by effect, those who

are making the requests for the information to him, to disclose BCBST's Confidential Information. The disclosure of BCBST's Confidential Information, if it happens, will also independently constitute an anticompetitive exchange of competitively sensitive information in violation of Section 1 of the Sherman Act.

CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF 15 U.S.C. § 1

62. BCBST re-alleges and incorporates the foregoing paragraphs as if fully restated herein.

63. The State Employee Defendants, by and through the anti-competitive actions that are outlined herein, have entered into, facilitated, and/or acquiesced in a contract or agreement in restraint of trade and commerce to disclose competitively sensitive, confidential, proprietary and commercially sensitive business data, the type of which the FTC has recognized should not be disclosed publicly under these circumstances because it can cause collusion, and otherwise harm competition and consumers, all in violation of 15 U.S.C. § 1.

64. In furtherance of this contract or agreement, the Defendants have agreed that BCBST's Confidential Information will be publicly disclosed in a manner that will certainly produce anti-competitive effects and harm consumers. Such disclosure will also independently constitute an anticompetitive exchange of competitively sensitive information in violation of Section 1.

65. This agreement, made over BCBST's clear objection, combined with the State Employee Defendants' effort to eliminate any confidentiality protections in the contracts between the State and BCBST, evidence a clear purpose, design and understanding, to reduce or eliminate competition in the health plan administration market in Tennessee, facilitate collusion and to otherwise harm competition and incentives to compete in that market and other adjacent health care markets.

66. This agreement, done over BCBST's clear objection, combined with the State Employee Defendants' effort to eliminate any confidentiality protections in the contracts between the State and BCBST, further shows a continuing pattern or plan to produce BCBST's Confidential Information as requested, which will further reduce or eliminate competition in the health plan administration market in Tennessee, as well as facilitate collusion and otherwise harm competition and incentives to compete in that market and other adjacent health care markets.

67. The Defendants' actions will have the effect of unreasonably restraining trade in the health plan administration and other adjacent markets in Tennessee. The anticompetitive effects include increased prices and reduced service quality in the market for health plan administration and increased prices and reduced service quality in other markets, including the markets for health care insurance and for health care services.

68. These anti-competitive effects will harm payors and consumers. There are no legitimate procompetitive justifications, and any cognizable justification is outweighed by the anti-competitive effects.

69. The Defendants' Agreement and planned disclosure of the Confidential Information constitute a violation of the Sherman Act under the "Rule of Reason," because the Defendants' actions facially restrict and are intended to restrict competition in the Tennessee health care markets, and in fact will have such effects.

70. As a direct, proximate, and foreseeable result of the Defendants' planned actions, BCBST will suffer irreparable injury and thus the Court must enjoin the disclosure of the information. Further, BCBST's claims are likely to succeed. There will be no harm to the State Employee Defendants or anyone else from a preliminary injunction, and the injunction is squarely in the public interest because it will prevent the irreparable anticompetitive harms described above.

COUNT TWO: VIOLATION OF DUE PROCESS/TAKINGS CLAUSE

71. BCBST re-alleges and incorporates the foregoing paragraphs as if fully restated herein.

72. This Count is brought pursuant to the Fifth Amendment to the Constitution, as applied to the States under the Fourteenth Amendment to the United States Constitution.

73. In the course of their production of BCBST's Confidential Information to Representative Daniel, the State Employee Defendants will produce information owned by BCBST that constitutes a trade secret under Tennessee law. This trade secret data, includes, but is not limited to, the "allowed amounts" data -- that is, the amount that BCBST pays to providers for services are a trade secret owned by BCBST, the confidentiality of which is vital to BCBST's business.

74. BCBST has a property right in those trade secrets, and this property right is protected by the Fifth Amendment's Takings Clause.

75. The Takings Clause prohibits the improper of taking of property of individuals and businesses without due process of law and just compensation. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002-04 (1984). This property includes business trade secrets.

76. The disclosure of BCBST's trade secrets by the State Employee Defendants to Representative Daniel without due process would be in violation of the Fifth Amendment of the Constitution, as applied to the states through the Fourteenth Amendment, and thus must be enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BCBST respectfully requests relief as follows:

(a) Declare that the Defendants intended actions are a violation of the Sherman Act and the United States Constitution.

(b) Enter an order temporarily restraining, and then preliminarily and permanently enjoining the State Employee Defendants from disclosing BCBST's Confidential Information in response to Representative Daniel's Open Records Laws request and otherwise.

(c) Award such further relief as the Court deems just and proper.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a jury trial of any and all issues in this action so triable of right.

Dated: December 13, 2019

Respectfully submitted,

/s/ Robert E. Boston, Esq.

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of Tennessee, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2019, a copy of the foregoing Complaint was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

Laurie S. Lee
Executive Director of the Department of Finance and Administration (Benefits Administration)
State of Tennessee
312 Rosa L. Parks Avenue, 19th Floor
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Nashville, TN 37243

/s/ Robert E. Boston, Esq.