

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

**CIGNA HEALTH AND LIFE
INSURANCE COMPANY,**

Plaintiff,

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.

**Civil Action Number _____
Jury Demand**

COMPLAINT

Plaintiff CIGNA Health and Life Insurance Company (“Cigna” 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 Sherman Act and the Fifth Amendment to the United States Constitution. In support of its claims, Cigna states as follows:

I. INTRODUCTION AND BACKGROUND

1. This is an action under the Sherman Act and the United States Constitution to enjoin individual employees of the State of Tennessee, acting in their official capacities, from disclosing

extremely competitively sensitive, valuable, confidential, proprietary, and trade secret information (“Confidential Information”) that Cigna provided to the State of Tennessee solely in connection with Cigna performing its obligations under contracts it has entered into with the State, including specifically contracts to provide medical claims administration services for the State’s Public Sector Plans within certain regions of the State.

2. Defendants Laurie S. Lee and John and Jane Does 1-100, in their official capacities as employees of the State (collectively the “State Employee Defendants”), have received requests from Martin Daniel (“Daniel”), a member of the Tennessee House of Representatives, for Cigna’s Confidential Information, purportedly pursuant to Tennessee’s Open Records Laws and/or other “sunshine” laws designed to foster government transparency (generally collectively “Open Record Laws”). As detailed below, the Confidential Information requested is a trade secret of Cigna’s with recognized proprietary value.

3. The State Employee Defendants have expressed their intention and/or have agreed to produce to Daniel Confidential Information that belongs to Cigna (and other insurers that contract with the State), with such disclosure to be made on or about December 16, 2019, purportedly pursuant to these Open Record Laws.

4. On information and belief, Daniel has advanced the aforementioned requests for disclosure at the behest of individuals and/or businesses who are attempting to (i) interfere with and impede Cigna’s legitimately held position as a contractor who administers portions of the State’s healthcare benefits program (a position Cigna earned through a competitive bidding process), (ii) promote anticompetitive coordination amongst Cigna’s actual and potential competitors, (iii) facilitate anticompetitive coordination by healthcare vendors and providers, and (iv) otherwise destroy efficiencies in the markets for healthcare products and services to the

detriment of third-party payors like Cigna, the State, other employer-sponsored group health plans, and consumers.

5. The planned disclosure of Cigna's Confidential Information to Daniel is not permitted under Cigna'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. To the contrary, it will stifle competition, harm consumers, and cause permanent damage to the healthcare 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. Cigna is a global health services company that, among other things, provides administrative services to employer-sponsored health benefit plans in the State of Tennessee, with the goal to improve its customers' health, well-being, and peace of mind.

8. Cigna has a contract with the State of Tennessee ("State") to provide medical claims administrative services for certain health and wellness benefit plans that the State offers to its employees. Among other things, Cigna provides the State and its employees, access to a network of contracted healthcare providers, customer and member support, and claims administration. In the course of fulfilling its obligations under its contract with the State of Tennessee, Cigna is required to provide the Confidential Information at issue to the State. The Confidential information disclosed to the State by Cigna is extremely sensitive, confidential, and proprietary data.

9. The Confidential Information includes Protected Health Information (“PHI”) (as such term is defined and protected by the Health Insurance Portability and Accountability 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 Cigna’s proprietary and commercially sensitive information, the protection of which is vital to Cigna maintaining a competitive position in the rapidly shifting healthcare markets.

11. A prime example of Confidential Information provided by Cigna to the State is the “allowable amount” that Cigna pays to specific healthcare providers based on contract negotiations with such providers. The “allowable amount” shows incredibly sensitive business information because it displays the payment rate negotiated by Cigna with each provider for services rendered to Cigna members. In addition, and as described more fully herein, Cigna also provides to the State other competitively sensitive pricing and cost information on a granular and individualized level.

12. This information was never intended to be and is not publicly disclosed by Cigna or the providers with whom Cigna is contracted. Providers negotiate rates with Cigna on the expectation that these rates will remain confidential, and Cigna protects against disclosure by contract. Indeed, public disclosure of this information would irreparably harm Cigna’s competitive position as well as overall competition in the healthcare 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. Daniel has requested that State Employee Defendants disclose Cigna's (and other payors'/insurers') Confidential Information. Upon information and belief, these requests are being made by Daniel 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 Cigna's business model and market position by trying to obtain extremely competitively sensitive information that these Cigna competitors would otherwise not be in the position to obtain, and on the other hand, to facilitate collusion based on such information. If Cigna's Confidential Information is disclosed, those anti-competitive effects likely will materialize.

15. In violation of the Sherman Act and Cigna'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 Cigna that they will disclose an enormous quantity of Cigna's Confidential Information on or about December 16, 2019. Such disclosure, by itself, will also violate Cigna's contract with the State, as well as the Sherman Act and the Fifth Amendment when it is implemented.

17. 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. The disclosure of the Confidential Information conflicts with the State's obligations under its contracts with Cigna.

18. Further, the disclosure of Cigna's Confidential Information would be a clear violation of the Sherman Act and Cigna's rights under the United States Constitution. The harm to Cigna and the public at large from the disclosure will also be considerable:

- Cigna clearly will be injured by competitors, including the third parties behind Daniel's request, learning about Cigna's detailed pricing and cost information (including, but not limited to, the "allowable amount" information) because those competitors will now be able to use this competitively sensitive information to bid differently and thus have an advantage over Cigna in the bidding process that these competitors would not have otherwise had.
- The disclosure of this information will give Cigna's actual and potential competitors for the administration of healthcare coverage and financing competitively sensitive information on Cigna'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 Cigna'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 healthcare services.
- These collusions will raise costs to the State and its members as well as other customers and members of Cigna. There will also likely be ripple effects. That is, based on the same disclosed Confidential Information, other insurers and healthcare providers can also collectively set higher prices and lower quality for services across the board outside the State account.
- This will stifle competition on the merits, impede Cigna's ability to effectively compete in the market, disadvantage Cigna's market position, and interfere with its customer relationships. It will also interfere with Cigna's relationship with

providers, who reasonably anticipated bidding for services in a confidential environment.

- Disclosure of the Confidential Information will also likely disincentivize Cigna and other providers of healthcare services from aggressively competing for the State's business, which may restrict output and harm the State as well as competition and consumers generally.

Therefore, Cigna brings this Complaint for prospective, equitable injunctive relief to prevent State Employee Defendants' planned disclosure of Confidential Information.

II. PARTIES, JURISDICTION, AND VENUE

19. Cigna is a global health services company that, among other things, provides administrative services and financing solutions, including health insurance, to employer-sponsored benefit plans, including specifically in the State of Tennessee. The corporate headquarters of Cigna are located in Bloomfield, Connecticut.

20. Defendant Laurie S. Lee ("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, Lee can be served with process at 312 Rosa L. Parks Avenue, Suite 1900, William R. Snodgrass Tennessee Tower, Nashville, Tennessee, 37243.

21. 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 Cigna and responding to the Open Records Laws requests at issue in this matter, from consideration of the request and evaluating its source to agreeing what information will be produced and disseminating that information to the requesting party.

22. 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.

23. There is personal jurisdiction over the Defendants because they work and perform their official duties in this District and because the wrongful acts alleged herein occurred within this District.

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

III. FACTUAL ALLEGATIONS

A. Cigna's Contract with the State and Confidentiality

25. Cigna is a provider of health services and financing solutions, including health insurance, in the State of Tennessee and beyond, providing or administering healthcare coverage to individuals, families, governmental entities, and businesses throughout the State of Tennessee.

26. As previously mentioned, Cigna has a contract with the State to provide medical claims administrative services for certain health and wellness benefit plans that the State offers to its employees and their dependents. Under this contract, Cigna provides a full range of administrative services to support the benefits offered by the State, including access to a network of contracted providers, customer/member relations, and claims processing.

27. Under its contract with the State, Cigna provides the State with Confidential Information. This is Confidential Information that Cigna has developed through its experience in

the marketplace and represents Cigna's carefully developed and wrought business property and trade secrets, and its existence and its secrecy affords Cigna a distinct competitive advantage. Cigna maintains the confidentiality of this information in the ordinary course of business.

28. With regard to the Confidential Information that the State has been given by Cigna, the contract provides that "[t]he State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by [Cigna] as confidential and proprietary, including information that would allow a person to obtain unauthorized access to confidential information or to electronic information processing systems owned by or licensed to the State."

29. Consistent with this language, Cigna goes to great lengths to protect its Confidential Information, up to and including designating the information it gives to the State as confidential and proprietary, executing non-disclosure agreements with counterparties that receive Cigna's data and other information, and other similar measures that are consistent with Cigna's commitment to ensure that its competitively critical information does not reach those who would use it for illicit and anticompetitive purposes.

30. The Confidential Information, among many other things, indicates the amounts Cigna pays to specific healthcare providers for services furnished to patients, the methodology for how Cigna 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.

31. For example, it would be highly detrimental to Cigna to have the amounts it pays to specific healthcare providers for services furnished to patients under its contract with the State disclosed. Public access to this Confidential Information would permit Cigna's actual and potential competitors to alter their own pricing proposals when competing against Cigna for the

State's (and other states or group health plans') business, providing these competitors an unearned and undeserved competitive advantage that they would not otherwise have, as well as an opportunity to (i) counter Cigna's business model, (ii) interfere with its customer relationships, and (iii) disadvantage Cigna in competition for non-State accounts. Further, the disclosure of this payment-to-provider-specific information could result in collusion on prices and other metrics of competition by those actual and potential competitors, as well as healthcare providers in several healthcare markets. Such collusion would harm Cigna as well as competition, payors, and consumers in the market generally.

B. Daniel's Open Record Request

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

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

34. Cigna and other payors that have contracts with the State have urged the State Employee Defendants, through conversations and correspondence, not to disclose the Confidential Information because of the harm it would cause to Cigna, the other payors, and the healthcare markets. Nonetheless, the State Employee Defendants have persisted in their intent to disclose Cigna's Confidential Information.

35. Upon information and belief, the State Employee Defendants' disclosure to Daniel will include Cigna Confidential Information regarding, among other things, how much healthcare

providers charged Tennessee state employees and their families for services provided to them (each provider's so-called "billed charges"), the amount the provider is contractually entitled to receive from Cigna (again, the key "allowable amount"), the portion of the allowable amount for which the patient is responsible as a deductible or other cost-sharing obligation, the portion of the allowable amount paid by Cigna on behalf of the State, as well as information regarding when payments were made, the services provided to a patient, the provider treating the patient, where the services occurred, the patients diagnosis and codes (*i.e.*, for claims submissions), along with legions of other data.

36. Disclosure of Cigna's Confidential Information, particularly on the granular level that the State Employee Defendants intend, will result in Cigna's competitors and healthcare providers having the ability to collude to drive up prices, diminish the quality and scope of healthcare services, and allow actual and potential competitors of Cigna to bid differently to Cigna's disadvantage based on information to which these competitors are not entitled. It will harm competition, consumers, payors (including the State of Tennessee and other employer-sponsored health plans), and Cigna's competitive position, as described throughout this pleading.

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

IV. THE SHERMAN ACT AND ANTI-COMPETITIVE CONDUCT

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

39. 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.

40. 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 healthcare coverage in Minnesota to disclose “competitively sensitive information, including information related to price and cost.”

41. 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 the sort of concerns present here if the Cigna Confidential Information is disclosed.

42. The FTC, supported by the U.S. Department of Justice’s Antitrust Division, concluded that the release of price information for healthcare services should only be permitted under limited circumstances that guarantee that one healthcare entity’s pricing information is not disclosed to the marketplace.

43. 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.”

44. In summary, the FTC has broadly advised the states and other market actors that “public disclosure of [healthcare market] information could reduce competition and increase prices to consumers.”

45. 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 healthcare marketplace.

46. 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 healthcare marketplace.

47. 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.”

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

49. On the other hand, the FTC has said, “where healthcare 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 Cigna in confidence, their trust in Cigna and the process is sullied.

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

51. 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.

52. 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).

53. 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.

54. Here, the State’s disclosure of Cigna’s Confidential Information, including granular information regarding prices and costs, harms competition, payors and consumers in the following ways:

- The disclosure of Cigna’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 amongst such competitors can be extended to adjacent markets,

including the private healthcare insurance market. For instance, Cigna'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 Cigna's allowable amount data is made public, it will encourage collusion across the entire health plan administration market, as well as adjacent healthcare coverage markets.

- The disclosure of Cigna's Confidential Information can enable healthcare 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 healthcare 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 Cigna). Providers contracting with Cigna 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 Cigna.
- Such collusion will likely result in higher prices and lower quality to the detriment of payors and consumers.
- Rather than competing on the merits, Cigna's actual and potential competitors can and, upon information and belief will, use the information that the State Employee Defendants intend to disclose to Daniel to (i) alter their prices and services offered, (ii) monitor Cigna's business strategies and model, and (iii) obtain additional long-term negotiating leverages, which impede effective competition from Cigna and

disadvantage it. This anticompetitive effect will likely extend outside of the State contract. As explained above, the “allowable amounts” apply to both the State contract and non-State accounts. Disclosure of this information will thus allow actual and potential competitors of Cigna to alter their bids against Cigna for even non-State customer accounts to Cigna’s disadvantage, further discouraging merit-based competition. These are exactly the anti-competitive concerns the FTC identified in its 2015 letter.

- Disclosure of Cigna’s Confidential Information, despite contractual provisions to the contrary and despite the clear irreparable harm to competition and to Cigna, will harm competition and consumers by disincentivizing Cigna 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 Cigna. 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 Cigna 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 Cigna’s Confidential Information will irreparably harm competition and consumers in the manners described above. For example, once

healthcare 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 Cigna'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.

55. Commentators and competition scholars have long identified healthcare 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, “healthcare 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 healthcare consumers, public health plans, and the State itself.”

56. 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 Confidential 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 Cigna. This represents more than enough information for healthcare service providers to coordinate the availability and cost of their services, leaving consumers with no choice but to accept services from providers that have benchmarked and calibrated all services.

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

58. The State Employee Defendants, with knowledge that Cigna's Confidential Information will be disclosed to the public, have entered into an agreement in restraint of trade with Daniel, and, by effect, those who are making the requests for the information to him, to disclose Cigna's Confidential Information. The disclosure of Cigna'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.

V. CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF 15 U.S.C. § 1

59. Cigna re-alleges and incorporates the foregoing paragraphs as if fully restated herein.

60. 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.

61. In furtherance of this contract or agreement, the Defendants have agreed that Cigna'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.

62. This agreement, made over Cigna's objection, evidences 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 healthcare markets.

63. This agreement, done over Cigna's objection, further shows a continuing pattern or plan to produce Cigna'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 healthcare markets.

64. 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 healthcare insurance and for healthcare services.

65. 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.

66. The State Employee Defendants' Agreement is a *per se* violation of 15 U.S.C. § 1, or alternatively, constitutes 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 healthcare markets, and in fact will have such effects.

67. As a direct, proximate, and foreseeable result of the State Employee Defendants' planned actions, Cigna will suffer irreparable injury, and thus the Court must enjoin the disclosure of the information. Further, Cigna'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

68. Cigna re-alleges and incorporates the foregoing paragraphs as if fully restated herein.

69. 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.

70. In the course of their production of Cigna's Confidential Information to Daniel, the State Employee Defendants will produce information owned by Cigna 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 Cigna pays to providers for services are a trade secret owned by Cigna, the confidentiality of which is vital to Cigna's business.

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

72. 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.

73. The disclosure of Cigna's trade secrets by the State Employee Defendants to 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 Cigna 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 preliminarily and permanently enjoining the State Employee Defendants from disclosing Cigna's Confidential Information in response to Daniel's Open Records Laws request and otherwise; and
- (c) Award such further relief as the Court deems just and proper.

JURY DEMAND

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

Respectfully submitted,

/s/ Erin Palmer Polly

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