

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Civil Action No.: 1:22-cv-603

Judge: Hon. Robert J. Jonker

Magistrate Judge: Ray Kent

ORAL ARGUMENT REQUESTED

**BCBSM'S RESPONSE TO PLAINTIFF'S MOTION
TO COMPEL DEPOSITIONS**

CONCISE STATEMENT OF ISSUE PRESENTED

Should Defendant Blue Cross Blue Shield of Michigan (“BCBSM”) be compelled to produce two witnesses for depositions before the completion of document discovery when Plaintiff has requested thousands of documents and seeks to use early depositions to advance its fishing expedition?

BCBSM says: No

Plaintiff says: Yes

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I. INTRODUCTION

Plaintiff issued two deposition notices in early September, one to a current BCBSM employee and one to a former BCBSM employee. Plaintiff served these deposition notices almost immediately after the parties' counsel had met and conferred on the 74 written discovery requests that Plaintiff has served, and from which BCBSM has already sought protection in this Court. Despite that the parties' counsel met in person to discuss discovery issues on the afternoon of September 8, Plaintiff's counsel gave no indication that he intended to take two depositions before receiving any of the thousands of documents he requested.

This type of underhanded tactic has become routine for Plaintiff's counsel in the early discovery stages of this case. In the filings the parties have presented to the Court in relation to the discovery topics that are at issue, Plaintiff's counsel has misrepresented the nature of the Court's rulings, distorted verbal communications the parties' counsel have had with each other, and duplicated motion practice on these topics with motions to compel that are no more than mirror images of BCBSM's motions for protective order.

While the Federal Rules generally allow discovery methods to be used in any sequence, they also give courts significant discretion to manage the order of discovery for the parties' convenience and to protect against abuse. Here, Plaintiff has served 74 written discovery requests that encompass decades' worth of communications and thousands of internal documents. A significant portion of those requests is objectionable, but BCBSM has committed to searching for and producing a substantial amount of responsive documents. It is in this context that BCBSM seeks, as contemplated under the Federal Rules, to order discovery in a manner that allows BCBSM to appropriately prepare its witnesses and ensure that the parties conduct depositions

efficiently in this document-heavy case. The Court should deny Plaintiff's motion to compel and grant BCBSM's motion for a protective order.

II. BACKGROUND

At issue in this motion are two premature deposition notices that Plaintiff issued. For context, on August 4, 2025, Plaintiff served 74 *discovery requests* on BCBSM. ECF No. 82-2. The vast majority are objectionable, but BCBSM agreed to provide a substantial amount of responsive information. As described in BCBSM's other discovery briefing, (ECF Nos. 82, 89, 91, 100), Plaintiff seeks, among other things, 40 years' worth of communications between BCBSM and any provider regarding any alleged claim overpayments; every available document regarding an unrelated lawsuit from 2019; information about every person who was responsible for implementing BCBSM's Shared Savings Program nearly 30 years ago; and virtually every internal and external communication BCBSM has ever had regarding its complex claims processing system. ECF No. 100, PageID.1739-1741.

BCBSM timely served its objections and responses to Plaintiff's discovery requests. BCBSM objected to Plaintiff's facially overbroad and abusive requests, and after a meet-and-confer with Plaintiff's counsel, BCBSM filed a motion for protective order on September 4, 2025. But BCBSM also agreed in its written responses to produce a significant amount of documents and information, including Plaintiff's electronic claims data from July 1, 2016 through April 16, 2021, which is the relevant time period for Plaintiff's claims.

Shortly after BCBSM filed its motion, on September 8, 2025, counsel for both sides met again to discuss an appropriate scope of discovery. Plaintiff's counsel expressed that if BCBSM produces Plaintiff's electronic claims data, it will be a good starting point for Plaintiff to reach an understanding as to how it can more accurately request relevant documents and information.

Plaintiff's counsel further expressed that he would be moving to compel. Both sides agreed that the discussion had been productive and that, while no definite agreements were reached as to the appropriate scope of discovery, there was at least a starting point for working collaboratively on discovery issues. Plaintiff moved to compel written discovery responses a few days after this meeting, on September 11, 2025. ECF Nos. 86, 87.

At no point during the parties' meet-and-confer did Plaintiff's counsel mention that he wanted to depose BCBSM employees or former employees before any documents are produced. Yet within hours of the meeting, Plaintiff's counsel issued two deposition notices to BCBSM's counsel. The first is a notice that Plaintiff intends to depose BCBSM's Director of Payment Integrity, Kimberly Jones-Schneider, on September 25, 2025. (**Ex. A**, Jones-Schneider Deposition Notice). The other is a subpoena directed to a former BCBSM employee, Jeff Baker, who previously worked under Jones-Schneider. (**Ex. B**, Baker Subpoena).

BCBSM filed a motion for protective order on September 15, 2025, seeking to delay those depositions until document discovery is complete. ECF No. 89. And on the same day, Plaintiff moved to compel the depositions, (ECF No. 86), which this brief addresses.

III. LEGAL STANDARD

Under Fed. R. Civ. P. 26(b), "parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]" And while discovery methods are generally permitted in any sequence within the proper scope of discovery, Fed. R. Civ. P. 26(d) expressly gives the Court the discretion to manage the order of discovery "for the parties' and witnesses' convenience and in the interests of justice." Further, courts have the discretion under Fed. R. Civ. P. 26(c) to grant protection against abusive discovery

sequencing “for good cause . . . to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”

IV. ANALYSIS

A. The Court should exercise its discretion to alter the annoying, harassing, and abusive discovery sequencing that Plaintiff seeks.

As it did in its motion to compel regarding document discovery, ECF Nos. 86, 87, Plaintiff continues to mispresent the Court’s prior discovery ruling. Plaintiff correctly points out that in denying BCBSM’s earlier motion to stay discovery, the Court held that it wants to resolve the issues here “through a discovery process” and that “we are going to move forward with discovery.” ECF No. 92, PageID.1645 (quoting Transcript, ECF No. 81). But this does not mean, as Plaintiff has stated repeatedly in its discovery briefing, that Plaintiff is free to pursue whatever information it wants from BCBSM unfettered by the scope and processes established by the Federal Rules of Civil Procedure.

Contrary to Plaintiff’s mischaracterizations of BCBSM’s actions, BCBSM is simply using available processes to seek protection against Plaintiff’s abusive discovery requests. BCBSM has not, for example, “refused to produce” documents. ECF No. 92, PageID.1646. Rather, in response to Plaintiff’s 74 discovery requests, BCBSM agreed to search for and produce documents responsive to a significant portion of Plaintiff’s requests while objecting to numerous requests that are facially outside the scope of permissible discovery.

BCBSM has also not made any “unilateral” decisions with respect to Plaintiff’s deposition notices. Rather, it has sought a protective order under Fed. R. Civ. P. 26(c) because Plaintiff seeks to use discovery sequencing to advance its fishing expedition. Fed. R. Civ. P. 26(d) establishes only that discovery methods can be used in any sequence “unless the court orders otherwise” As noted in one of the cases Plaintiff cites in its brief, the Rules use this “unless” language “to

make clear and explicit the court’s power to establish priority by an order issued in a particular case.” *Hightower-Mathis v. Nextcare Mich. Providers, PLLC*, No. 23-13310, 2024 WL 4535444, at *3 (E.D. Mich. Oct. 21, 2024) (internal quotation marks omitted). Indeed, as explained in another case Plaintiff cites, “[i]f a party objects to the sequence and timing of any properly noticed depositions, then that party *must* seek a protective order pursuant to Federal Rule of Civil Procedure 26(c) asking that said depositions be prohibited or stayed until after other discovery has been presented based upon a showing of good cause.” *Sexual Sin De Un Abdul Blue v. River Rouge*, No. 16-cv-10526, 2017 WL 2438789, at *2 (E.D. Mich. June 6, 2017) (emphasis added).¹

Here, there is good cause to deny Plaintiff the discovery sequencing it seeks. First, common sense and ordinary practice dictate that when a case involves heavy document discovery, depositions should occur *after* the exchange of relevant documents and information. This typical sequence leads to better-prepared attorneys and witnesses, and thus results in greater efficiency, as contemplated under Fed. R. Civ. P. 1’s mandate that the Federal Rules should be “administered . . . to secure the just, speedy, and inexpensive determination of every action and proceeding.” In this complex case in which *Plaintiff* has submitted requests for thousands of documents, allowing depositions to be taken before a single document has been produced is neither efficient nor just.

¹ Plaintiff also skews controlling precedent by citing three unpublished cases for the proposition that “courts consistently reject attempts to delay depositions until after written discovery is complete.” ECF No. 92, PageID.1651 (citing *Hightower-Mathis* 2024 WL 4535444; *Summer v. Detroit Pub. Sch. Cmty. Dist.*, No. 21-12936, 2022 WL 22257187 (E.D. Mich. June 30, 2022); and *Teletel, Inc. v. Tel-Tel US Corp.*, No. 99Civ.4811, 2000 WL 1335872 (S.D.N.Y. Sept. 15, 2009)). These cases are barely worth addressing, except to say that they do not bear the slightest factual similarity to this one and do not stand for any broad principles related to discovery sequencing beyond their case-specific facts.

Second, Plaintiff's written discovery requests show that its counsel is more interested in a fishing expedition than proper discovery. Indeed, he seeks irrelevant discovery to pursue claims against BCBSM on behalf of *other clients*. For instance, Plaintiff's written discovery requests seek, among other items, decades' worth of documents and communications; documents that related exclusively to another lawsuit against BCBSM; every document in BCBSM's possession regarding its complex claims processing systems, regardless of applicability to Plaintiff; and virtually every internal and external communication BCBSM has ever had in connection with those systems. Significant portions of Plaintiff's requests are outside the scope of discovery under Fed. R. Civ. P. 26(b). But given the scope of Fed. R. Civ. P. 30(c)(2), Plaintiff's proposed early depositions could be used—and every indication from Plaintiff's counsel suggests they *will be* used—to seek information about BCBSM that is outside the scope of Plaintiff's claims and within the scope of BCBSM's various objections to Plaintiff's discovery requests. Other than that, there cannot be any reason beyond harassment of potential witnesses that Plaintiff has for taking the noticed depositions.

Thus, for the convenience of the parties and to protect against Plaintiff's discovery abuses, the Court should exercise its discretion to manage the order of discovery and prohibit any depositions from occurring until after document discovery is complete.

B. There is no valid basis to award Plaintiff the sanctions it requests.

Plaintiff's request for sanctions is completely baseless and highly inappropriate. The very cases on which Plaintiff relies make it clear that a party should seek a protective order if it objects to the sequencing of noticed depositions. *Sexual Sin De Un Adbul Blue*, 2017 WL 2438789, at *2. That is what BCBSM did.

Plaintiff argues it is entitled to sanctions because “[t]here is no rule, order, or agreement requiring written discovery to precede depositions.” ECF No. 92, PageID.1654. But this is akin to saying that because there is no strict rule to institute a protective order in any case, parties should be sanctioned when they move for one.

Plaintiff’s argument ignores the language in Rule 26(d) that discovery methods should be used in any sequence “unless the court orders otherwise” and also ignores holdings in its cited cases that parties *should* move for a protective order when they object to the sequencing of discovery. BCBSM is not “unilaterally” sequencing discovery—it has asked the Court, in accordance with the applicable provisions of the Federal Rules, to make a ruling under Rules 26(c) and (d). In other words, Plaintiff is not seeking sanctions based on any obstruction of the discovery process, but because BCBSM *is following* the discovery process outlined in the Federal Rules by seeking to protect itself against Plaintiff’s overreach.

None of the cases Plaintiff cites leads to a different conclusion. In the two cases Plaintiff cites in Section III(D) of its brief where sanctions were granted, the sanctioned party completely refused to permit the taking of the other party’s requested depositions. ECF No. 92, PageID.1654 (citing *Alta Constr. Equip. Ill., LLC v. Constar Servs., LLC*, No. 20-CV-10789, 2021 WL 120852 (E.D. Mich. Jan. 13, 2021) and *Malott v. Lacrosse*, No. 17-CV-00079, 2018 WL 4925745 (W.D. Mich. Sept. 12, 2018)). That is not the case here. As BCBSM has explained several times, it has no issue with Plaintiff ultimately deposing Kimberly Jones-Schneider or Jeff Baker. Rather, it has moved in this document-heavy case to conduct those depositions in an efficient and orderly manner for the convenience of the parties and to protect against discovery abuse.

V. CONCLUSION

For the reasons described above, BCBSM respectfully requests that the Court deny Plaintiff's motion to compel, grant BCBSM's motion for protective order (ECF No. 89), and order that Plaintiff may not take depositions in this matter until after document discovery is complete.

Respectfully submitted,

ALLEN OVERY SHEARMAN STERLING US LLP

By: s/ Daniel Lewis

Daniel Lewis (Adm. in W.D. MI, NY Reg. 4084810)

Jeffrey D. Hoschander (Adm. in W.D. MI, NY Reg. 4496337)

599 Lexington Avenue

New York, NY 10022

Telephone: +1.212.848.4000

Facsimile: +1.202.508.8100

daniel.lewis@aoshearman.com

jeff.hoschander@aoshearman.com

Todd M. Stenerson (P51953)

1101 New York Avenue, NW

Washington, DC 20005

Telephone: +1.202.508.8093

Facsimile: +1.202.661.7484

todd.stenerson@aoshearman.com

ZAUSMER, P.C.

By: s/ Mark J. Zausmer

Mark J. Zausmer (P31721)

Michael A. Schwartz (P74361)

Nathan S. Scherbarth (P75647)

Jason M. Schneider (P79296)

32255 Northwestern Hwy., Ste. 225

Farmington Hills, MI 48334

Telephone: +1.248.851.4111

Facsimile: +1.248.851.0100

mzausmer@zausmer.com

mschwartz@zausmer.com

nscherbarth@zausmer.com

jschneider@zausmer.com

Dated: September 29, 2025

Attorneys for Defendant

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Case No. 1:22-cv-603

Plaintiff,

Honorable Robert J. Jonker

v.

Magistrate Judge Ray Kent

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

NOTICE OF DEPOSITION OF KIMBERLY JONES SCHNEIDER

PLEASE TAKE NOTICE that pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, the following deposition will be taken upon oral examination, before a certified court reporter having power to administer oaths, such deposition to continue until completed:

Deponent: Kimberly Jones Schneider

Date/Time: Thursday, September 25, 2025, at 9:00 a.m.

Place: ZAUSMER, P.C.
32255 Northwestern Hwy, S. 225
Farmington Hills, MI 48334

You are invited to attend the taking of this deposition and to participate in it in accordance with the applicable rules of the Federal Rules of Civil Procedure. This deposition will be recorded by a court reporter.

Respectfully submitted,

VARNUM LLP

Attorneys for Tiara Yachts, Inc.

Dated: September 8, 2025

By: /s/ Aaron M. Phelps
Perrin Rynders (P38221)
Aaron M. Phelps (P64790)
Herman D. Hofman (P81297)
Bridgewater Place, P.O. Box 352
Grand Rapids, MI 49501-0352
prynders@varnumlaw.com
amphelps@varnumlaw.com
hdhofman@varnumlaw.com

EXHIBIT B

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Michigan

TIARA YACHTS, INC,

Plaintiff

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendant

Civil Action No. 1:22-cv-603-RJJ-RJK

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Jeff Baker
1699 North Lake Drive, Troy, MI 48083

(Name of person to whom this subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place: Varnum LLP
39500 High Pointe Blvd., Suite 350
Novi, MI 48375

Date and Time:
09/26/2025 9:00 am

The deposition will be recorded by this method: court reporter

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/08/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tiara Yachts, Inc., who issues or requests this subpoena, are:

Aaron M. Phelps, amphelps@varnumlaw.com T: (616) 336-6000 F: (616) 336-7000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:22-cv-603-RJJ-RJK

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Civil Action No.: 1:22-cv-603

Judge: Hon. Robert J. Jonker

Magistrate Judge: Hon. Ray Kent

INDEX OF EXHIBITS

Exhibit A. Jones-Schneider Deposition Notice

Exhibit B. Baker Subpoena