

**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

**BCBSM'S RESPONSE IN OPPOSITION TO PLAINTIFF'S APPEAL OF THE
MAGISTRATE JUDGE'S OCTOBER 9, 2025 ORDER (ECF NO. 109)**

CONCISE COUNTER-STATEMENT OF ISSUE PRESENTED

Did the Magistrate Judge properly exercise his discretion in limiting Tiara Yachts and BCBSM to 30 requests for production, each, in this matter, based upon proportionality factors enumerated in Fed. R. Civ. P. 26?

BCBSM says: Yes.

Tiara Yachts says: No.

The Magistrate Judge would say: Yes.

This Court should say: Yes.

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I. INTRODUCTION

Plaintiff's Rule 72 objections and "appeal" of the Magistrate Judge's order regarding discovery motions (ECF No. 109) is merely the latest in a series of discovery tactics geared more toward harassing BCBSM than proving Plaintiff's claims. The crux of Plaintiff's objections is that it is unhappy the Magistrate Judge properly exercised his discretion in limiting each party to 30 requests for production. This reasonable limitation was imposed after Plaintiff served 63 requests for production, most of which were facially irrelevant, overbroad, and disproportionate to the needs of this case.

As Plaintiff concedes, there is no authority from this Court, the United States District Court for the Eastern District of Michigan, or the Sixth Circuit to support its objections. And the out-of-jurisdiction authorities cited by Plaintiff do not support its argument that a limit on the number of requests for production a party may serve is impermissible. Those cases instead only establish the uncontroversial proposition that the Federal Rules of Civil Procedure do not include an explicit cap on such requests.

Even so, it is Plaintiff's burden under Fed. R. Civ. P. 72(a) to establish that the Magistrate Judge's order "is clearly erroneous or is contrary to law." It cannot do so here. The Magistrate Judge properly exercised his broad discretion in controlling discovery, finding that Plaintiff's 63 requests for production of documents were "excessive and in violation of Fed. R. Civ. P. 1 and 26," (ECF No. 109, PageID.1840) and limiting *both sides* to 30 requests for production of their choice. Plaintiff's objections should thus be denied.

II. BACKGROUND

Plaintiff served 74 separate discovery requests on BCBSM on August 5, 2025. This included 63 requests for production of documents, most of which sought irrelevant information, were disproportionate to the needs of the case, and were overbroad. Plaintiff requested:

- Every complaint BCBSM has received regarding alleged overpayments *since 1984*, along with every related communication and document in BCBSM's possession (Plaintiff's contract with BCBSM started in 2006). (ECF No. 82-2, RFP Nos. 20, 21);
- Every "program, policy, procedure, or disclosure" related to the BlueCard Program, also *dating to 1984*. (ECF No. 82-2, RFP No. 45);
- Essentially every document related to a purported "whistleblower" lawsuit that was filed six years ago in Wayne County Circuit Court. Plaintiff dedicated 20 requests for production to seeking this information. (ECF No. 82-2, RFP Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 34, 36, 37, 38, 39, 40, 41, 42, 43);
- The identity of *every* "Person responsible for the design and implementation of BCBSM's 1997 claims 'processing logic.'" (ECF No. 82-2, Interrogatory No. 4);
- The identity of "*all* third-party vendors whom BCBSM has engaged to provide cost management services and savings programs," including those other than the Shared Savings Program at issue here. (ECF No. 82-2, Interrogatory No. 10);
- Every document in BCBSM's possession that is "related to" certain topics, including BCBSM's general policies and practices for identifying and responding to excessive and fraudulent claims, internal training regarding such claims, communications regarding unrelated investigations of such claims, BCBSM's claims processing system, and internal audits to identify alleged overpayments. (ECF No. 82-2, RFP Nos. 2, 3, 4, 5, 6, 7, 8, 22, 23, 24, 25, 33). In addition to the use of the overly broad phrase "related to," these requests do not have *any* time limitations.
- All communications "related in any way to handling communications with BCBSM's former, current, or prospective customers regarding an abusive provider's practice(s)," regardless of whether those communications related to Plaintiff. (ECF No. 82-2, RFP No. 54);
- "[A]ll documents and communications related to BCBSM's Payment Integrity Services" and "all documents and communications with any service providers or

third-party vendors, former and current, relating in any way to” Payment Integrity Services, even though BCBSM’s Payment Integrity Services encompass programs that extend *well beyond* those at issue here. (ECF No. 82-2, RFP Nos. 55, 56);

- “[A]ll documents and communications relating to deficiencies, errors, and/or missing information in [BCBSM’s] claims data for Plaintiff, the Plan, or *other ASC customers*,” thus explicitly fishing for information that has *nothing to do with Plaintiff*. (ECF No. 82-2, RFP No. 57);
- “[A]ll documents and communications regarding BCBSM’s decision to implement the Shared Savings Program” and “all documents and communications relating to the costs that were avoided or recovered as a result of the Shared Savings Program,” even though neither topic relates to how the Shared Savings Program *impacted Plaintiff*. (ECF No. 82-2, RFP Nos. 58, 61);
- “[A]ll documents and communications relating BCBSM’s investigation and/or analysis of claims impacted by its system logic” and “all documents and communications reflecting BCBSM’s disclosure of the implications of its system logic,” again regardless of *whether* those documents and communications impacted Plaintiff; (ECF No. 82-2, RFP Nos. 62, 63);
- *All of BCBSM’s company financial statements*. (ECF No. 82-2, RFP No. 35);
- Documents and information that are targeted toward Plaintiff and the Plan, but extend well beyond ERISA’s 6-year statute of repose. (ECF No. 82-2, RFP Nos. 3, 31, 32, 44, 53, 60, Interrogatory Nos. 5, 6, 7, 8, 9); and
- Documents and communications related to BCBSM’s internal investigation of the claims here and its claims processing systems generally. (ECF No. 82-2, RFP Nos. 46, 47, Interrogatory Nos. 1, 3).

BCBSM committed to searching for and producing documents that are responsive to more than a third of Plaintiff’s mostly improper document requests. This includes commitments to produce Plaintiff’s electronic claims data within an appropriate time period, as well as documents that are sufficient to describe the Payment Integrity policies and processes that applied to Plaintiff. (ECF No. 87-6, Response Nos. 4, 5, 6, 31).

Given Plaintiff’s improper discovery requests, BCBSM moved for a protective order. (ECF No. 82). Plaintiff then filed a competing motion to compel, which glossed over many of the glaring

problems with its facially abusive discovery requests and inaccurately claimed that BCBSM refused to produce anything in discovery. (ECF No. 86). The competing motions were referred to the Magistrate Judge, and a hearing was held on October 7, 2025. (ECF No. 108):

1 Now, I got to say, I got to apologize to you, because
2 the reason we are here today, after I read all the materials,
3 is very clear to me, and that is that we failed to put a limit
4 on the number of requests for documents. Now, I didn't conduct
5 the Rule 16 in this case, but in every case that I have
6 conducted a Rule 16 in -- and I was back there over lunch
7 trying to figure out how many that might be. I have been on
8 the bench, this is year 11. So let's say a thousand maybe Rule
9 16s and a thousand case management orders I have issued. Last
10 week I gave a party 25, okay? Beyond that I can't remember
11 ever giving a party more than 20 requests for document
12 productions, and I have never had a party come back and say,
13 can I have more? That wasn't done in this case. I think if it
14 had been done we wouldn't be here now, and possibly none of
15 these motions would be filed, but certainly we wouldn't have
16 dueling motions.

10 Before we go further, let me say, all the decisions I
11 am going to make here this afternoon are informed by two rules
12 of the Federal Rules of Civil Procedure. Rule 26, which
13 defines and limits discovery to any nonprivileged matter that
14 is relevant to any party's claim or defense and proportional to
15 the needs of the case considering the importance of the issues
16 at stake, the amount in controversy, the party's relevant
17 access to information, the party's resources, the importance of
18 the discovery in resolving the issues, and whether the burden
19 or expense of the proposed discovery outweighs its likely
20 benefit.

21 And also, in the overarching rule, Rule 1, which
22 precedes and informs the application of all the other rules,
23 requires me and you to administer and employ the rules to
24 secure the just, speedy and inexpensive determination of
25 everybody action.

[ECF No. 108, PageID.1831-1832.]

While there was no limit contained in the case management order in this matter, the Magistrate Judge exercised his discretion to later limit the number of requests for production that each side could serve, as he has done for over a decade. The Magistrate Judge initially instructed Plaintiff to pick 30 of its existing 63 requests, but the order entered after the hearing modified that instruction and provided considerable flexibility: “[U]pon further reflection, fairness dictates that

plaintiff be allowed to reformulate its original document requests if it so chooses.” (ECF No. 109, PageID.1840-1841.)¹ Plaintiff’s objections to this limitation now follow.

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[.]” Rule 26(b) was amended in 2015 “to require that all discovery be ‘*proportional*’ in nature.” *Helena Agri-Enter., LLC v. Great Lakes Grain, LLC*, 988 F.3d 260, 273 (6th Cir. 2021) (emphasis added). The purpose of the change “was ‘to improve a system of civil litigation that in many cases . . . has become too expensive, time-consuming, and contentious, inhibiting effective access to the courts.’” *Id.* (quoting *U.S. ex rel. Customs Fraud Investig., LLC v. Victaulic Co.*, 839 F.3d 242, 258 (3d Cir. 2016)). “Instead of facilitating costly and delay-inducing efforts to look under every stone in an e-discovery world populated by many stones, the new rule ‘crystallizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality.’” *Id.* (quoting John G. Roberts, Jr. 2015 Year-End Report on the Federal Judiciary 6 (2015)). “It is now the power—and *duty*—of the district courts actively to manage discovery and to limit discovery that exceeds its proportional and proper bounds.” *Id.* (internal quotation marks omitted). And indeed, “lower courts are afforded broad leeway in managing discovery.” *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 723 (6th Cir. 2025).

In the context of a challenge under Fed. R. Civ. P. 72, a finding is “clearly erroneous” when “the reviewing court on the entire evidence is left with the definite and firm conviction that a

¹ In compliance with the Magistrate Judge’s Order, Plaintiff has since submitted 30 new requests for production, bringing the total number of requests posited in this matter to 93. While Plaintiff’s counsel has stated that the original 63 requests for production were withdrawn, BCBSM has not received anything in writing indicating withdrawal.

mistake has been committed.” *United States v. Mabry*, 518 F.3d 442, 449 (6th Cir. 2008). Put differently, a reviewing court cannot reverse a magistrate judge’s finding merely because it would have decided the matter differently. *Sedgwick Ins. v. F.A.B.E. Custom Downstream Sys., Inc.*, 47 F. Supp. 3d 536, 538 (E.D. Mich 2014); *LaFountain v. Martin*, No. 1:07-cv-76, 2010 WL 1416864, at *1 (W.D. Mich. Apr. 2, 2010). And a decision can be found contrary to law only where the legal conclusions of the magistrate judge “contradict or ignore applicable precepts of law, as found in the Constitution, statutes, or case precedent.” *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff’d*, 19 F.3d 1432 (6th Cir. 1994); *Roby v. Bloom Roofing Sys.*, 343 F.R.D. 487, 491 (E.D. Mich. 2023).

IV. ANALYSIS

A. Limiting the number of requests for production each party may serve is a proper exercise of the Magistrate Judge’s discretion to control discovery and is not contrary to any precedent.

Plaintiff argues that the Magistrate Judge’s limitation on the number of requests for production each side may serve violates the Federal Rules of Civil Procedure because Rules 26 and 34 do not expressly impose a numerical cap on such requests. But if Plaintiff’s logic were followed, no trial court could *ever* limit the number of requests for production a party could serve because such a limitation does not appear in the text of Rules 26 or 34. This would render the hundreds of case management orders issued by this Magistrate Judge—and the thousands of case management orders around the country—facially invalid.

But as Plaintiff readily admits, there is *no authority* from within the Sixth Circuit to support its objections: “After diligent efforts, Tiara Yachts’ counsel did not locate a case either in the Sixth Circuit or in the Western District of Michigan that directly dealt with this issue.” (ECF No. 112, PageID.1848.) Standing alone, this is fatal to Plaintiff’s argument. And while Plaintiff cites various

non-binding, extra-jurisdictional cases that it claims supports their argument (they do not), the lack of any controlling case law from within the Sixth Circuit to support Plaintiff's position means that the Magistrate Judge's order *cannot be subject to reversal*. Under Fed. R. Civ. P. 72(a), reversal is *only* warranted where a Magistrate Judge's decision is "contrary to law." Without any precedent to support Plaintiff's argument, that simply cannot be the case here. *See Roby*, 343 F.R.D. at 491 ("Defendant cites non-binding cases from other districts, but they do not permit the Court to overturn [the Magistrate Judge's] legal conclusions because they are not 'precedent' under Rule 72(a)'s 'contrary to law' standard."); *LaFountain*, 2010 WL 1416864, at *1 ("The reviewing court must exercise independent judgment with respect to those legal conclusions and may overturn those conclusions which contradict or ignore applicable precepts of law, as found in the constitution, statutes, or case precedent."). Because Plaintiff has cited no precedent or controlling legal authority for its position here, the Magistrate Judge's decision was not "contrary to law" as set forth in Rule 72(a) and cannot be overturned.

B. Plaintiff's cited cases are unavailing in any event.

Plaintiff is correct that Rule 34 does not explicitly limit the number of requests for production a party may serve. But this does *not* mean that the Court can never restrict the number of requests for production in a case, provided that such limitations are consistent with Rules 1 and 26, and the Federal Rules of Civil Procedure as a whole. And while Plaintiff cites a handful of unpublished, non-binding, out-of-jurisdiction cases for the noncontroversial proposition that Rule 34 does not facially impose a numerical limit on requests for production, *none* of these cases holds that a trial court inherently lacks discretionary authority to limit the number of requests for production as case needs and proportionality dictate.

By contrast, there *is* authority from this Court imposing meaningful limits on the number of requests for production. *See, e.g., Onumonu v. Mich. Dep't of Corr.*, No. 1:20-cv-816, 2022 WL 22861292, at *4 (W.D. Mich. Aug. 26, 2022) (denying motion to compel where request for production “exceeds the number of requests [for production] authorized by the [case management order]”).

C. The Magistrate Judge’s discretionary decision to limit both parties to 30 requests for production was a proper exercise of its authority to control discovery and is consistent with Fed. R. Civ. P. 1 and 26.

Trial courts have broad discretion, and indeed a “duty,” to impose meaningful limits on discovery, consistent with the Federal Rules of Civil Procedure: “It is now the power—and *duty*—of the district courts actively to manage discovery and to limit discovery that exceeds its proportional and proper bounds.” *Helena Agri-Enter., LLC*, 988 F.3d at 274 (internal quotation marks omitted). To that end, “lower courts are afforded broad leeway in managing discovery.” *Benson*, 136 F.4th at 723.

Here, Plaintiff submitted 63 requests for production which were facially overbroad, sought irrelevant information, and were disproportionate to the needs of this case. Indeed, many of the requests appeared to be nothing but a “fishing expedition” designed to uncover other purported claims against BCBSM that are unrelated to the discrete issues at play here. The Magistrate Judge thus properly exercised his discretion and imposed proportionality requirements by limiting both parties to 30 requests for production. This meaningful limit is consistent with Rule 26’s proportionality requirements and well within the Magistrate Judge’s discretion. Plus, the Magistrate Judge did not even require Plaintiff to choose from the 63 previously-filed requests for production, but gave it broad leeway to refashion its original requests as it sees fit. This was a

proper exercise of the Magistrate Judge's discretion, was not contrary to law, and should not be reversed.

V. CONCLUSION

For the reasons described above, BCBSM respectfully requests that this Court deny Plaintiff's "appeal" and objections to the Magistrate Judge's discovery order (ECF No. 109).

Respectfully submitted,

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