

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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TIARA YACHTS, INC.,

Case No.1:22-cv-603

Plaintiff/Counter-Defendant,

Honorable Robert J. Jonker

v .

Magistrate Judge Ray Kent

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant/Counter-Plaintiff.

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**PLAINTIFF/COUNTER-DEFENDANT'S ANSWER TO**  
**DEFENDANT/COUNTER-PLAINTIFF'S COUNTERCLAIMS**  
**AND ADDITIONAL DEFENSES**

Tiara Yachts, Inc., ("Plaintiff/Counter-Defendant" or "Tiara Yachts") by and through its counsel, VARNUM LLP, and for its Answer to Defendant/Counter-Plaintiff Blue Cross Blue Shield of Michigan's ("Defendant/Counter-Plaintiff" or "BCBSM") Counterclaim states as follows:

**Count I**  
**Co-Fiduciary Liability under ERISA**

1. Tiara Yachts was the Plan Sponsor and Administrator of its self-funded health benefits plan (the "Plan").

**ANSWER: Admitted only that Tiara Yachts is the Plan Sponsor of its Plan. The remaining allegations in Paragraph 1 are denied; BCBSM was the administrator for the Plan. In further response, regarding the Plan, BCBSM had responsibility and discretionary authority as claims administrator to make final benefit determinations and plan interpretations.**

2. Tiara Yachts and Blue Cross Blue Shield of Michigan ("BCBSM") entered into an Administrative Services Contract (the "ASC") in January 2006. ECF No. 12-2.

**ANSWER: Admitted that Tiara Yachts and BCBSM entered into an initial ASC in January 2006. Tiara Yachts further states that ECF No. 12-2 (PageID.140) is not the initial ASC, but instead refers to an ASC dated January 1, 2016.**

3. Under the ASC, Tiara Yachts delegated to BCBSM the responsibility and authority to make final benefit determinations. Tiara Yachts "retain[ed] all other fiduciary responsibilities and duties under ERISA not specifically delegated to BCBSM" under the ASC. *Id.*, PageID.141 Art. II § A.

**ANSWER: Admitted that Tiara Yachts delegated to BCBSM, and BCBSM accepted, responsibility and discretionary authority as claims administrator to make final benefit determinations and plan interpretations. Tiara Yachts further states that the ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 3 are inconsistent with that document, Tiara Yachts denies those allegations as untrue. In further response, Tiara Yachts retained no fiduciary responsibilities that relate in any way to BCBSM's misconduct as set forth in the Complaint.**

4. BCBSM provided Tiara Yachts with access to claims data for the claims that BCBSM processed each month.

**ANSWER: Denied as untrue.**

5. The ASC provided Tiara Yachts with the right to dispute any claim within 60 days of receiving access to a paid claims listing. *Id.*, PageID.142 Art. II § D.

**ANSWER: The ASC is a written document that speaks for itself. Paragraph D of Article II of the ASC is void because it purports to limit the right of Tiara Yachts to dispute a claim. In further response, the ASC says nothing about disputing BCBSM payment of a claim or other administrative actions, but instead gave BCBSM responsibility and discretionary authority**

as claims administrator to make final benefit determinations and plan interpretations, and to the extent the allegations in Paragraph 5 are inconsistent therewith Tiara Yachts denies them as untrue.

6. The ASC also provided Tiara Yachts with the right to audit claims incurred under the ASC. *Id.*, PageID.144 Art. II § G.

**ANSWER: Denied as untrue.** The ASC is a written document that speaks for itself. There is nothing in the ASC that gave Tiara Yachts true audit rights, but rather the ASC attempted to curtail the rights of Tiara Yachts to fully audit BCBSM's administration of healthcare claims, in violation of federal law and public policy. In further response, Paragraph G of Article II of the ASC is void as violative of federal law and public policy.

7. Each year, Tiara Yachts signed a pricing addendum to the ASC, a Schedule A, that renewed and amended the ASC.

**ANSWER: Admitted only that Tiara Yachts executed a Schedules A roughly annually.** The remaining allegations in Paragraph 7 are neither admitted nor denied because Tiara Yachts lacks sufficient information to do so.

8. When individual beneficiaries enrolled in the Plan sought care from non-participating providers outside the territory that BCBSM serves, there was no negotiated rate.

**ANSWER: Denied as untrue.**

9. This means that the individual beneficiary—i.e., the patient—may receive a bill from that provider for the balance of the amount that is not covered by the Plan.

**ANSWER: Denied as untrue.**

10. To protect such individual beneficiaries from this "balance billing," the ASC specifically permitted BCBSM to reimburse the non-participating provider for the full amount

charged so that the provider would not seek any differences from the individual beneficiaries directly.

**ANSWER: Denied as untrue.**

11. Tiara Yachts expressly agreed to and did not dispute the policy of paying the full amount charged by a non-participating provider for the full amount charged by a provider.

**ANSWER: Denied as untrue.**

12. In December 2017, Tiara Yachts signed a Schedule A that announced BCBSM's implementation of its Shared Savings Program ("SSP"). ECF No. 12-5. This Schedule A stated that BCBSM was implementing the SSP "to enhance the savings realized by its customers through additional pre-payment and post-payment recovery efforts." *Id.*, PageID.161.

**ANSWER: Tiara Yachts admits that it signed the Schedule A for 2018. That Schedule A is a written document that speaks for itself. To the extent the allegations in Paragraph 12 are inconsistent with that document, Tiara Yachts denies those allegations. In further response, Tiara Yachts denies that the SSP "enhanced" any "savings" realized by Tiara Yachts or its Plan, but rather did the opposite.**

13. By signing this Schedule A, Tiara Yachts expressly acknowledged that BCBSM would "retain as administrative compensation 30% of the recoveries or cost avoidance" relating to pre-payment forensic billing review, advanced payment analytics, subrogation, and provider credit balance recovery. *Id.*, PageID.161.

**ANSWER: Admitted that the quoted terms are contained in the referenced Schedule A. That Schedule A is a written document that speaks for itself. To the extent the allegations in Paragraph 13 are inconsistent with or mischaracterize that document, Tiara Yachts denies those allegations. In further response, BCBSM used the SSP to collect more in fees when its**

**fiduciary responsibilities required it to avoid the need for any "recoveries or cost avoidance," and any agreement by BCBSM to avoid its fiduciary responsibilities is void as against public policy.**

14. Tiara Yachts did not dispute the implementation, validity, or intent of the SSP, either upon its introduction or throughout its application to BCBSM's processing of claims.

**ANSWER: Denied as characterized. In further response, to the extent Tiara Yachts did not previously dispute BCBSM's implementation, validity, or intent of the SSP, it was because BCBSM breached its fiduciary duties by concealing, when it should have disclosed to Tiara Yachts, material facts regarding the SSP; the SSP violated federal law and consists of prohibited self-dealing transaction under ERISA.**

15. During its relationship with BCBSM, Tiara Yachts never exercised any of its audit rights under the ASC.

**ANSWER: Denied as characterized. There is nothing in the ASC that gave Tiara Yachts true audit rights, but rather the ASC attempted to curtail the rights of Tiara Yachts to fully audit BCBSM's administration of healthcare claims in violation of federal law and public policy. In further response, BCBSM failed to provide Tiara Yachts with its claims data; any limitation on audit rights in the ASC, including in Paragraph G of Article II of the ASC, are void as violative of federal law and public policy.**

16. At all relevant times, Tiara Yachts was a Plan fiduciary under ERISA 29 U.S.C. § 1002(21) because it was the Plan Sponsor.

**ANSWER: The allegations in Paragraph 16 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts admits only that it is the Plan Sponsor of its Plan.**

17. Tiara Yachts owed fiduciary duties to the Plan in transactions with Plan assets and in engaging and monitoring third parties to provide services to the Plan.

**ANSWER: The allegations in Paragraph 17 purport to state conclusions of law to which no response is required. Any allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue.**

18. Tiara Yachts had fiduciary duties under ERISA to exercise care, skill, prudence, and diligence exclusively in the best interests of the Plan when it negotiated, executed, and monitored its contractual relationship with BCBSM. These duties included the duty to take reasonable steps to monitor BCBSM's processing of claims to ensure proper treatment under ERISA.

**ANSWER: The allegations in Paragraph 18 purport to state conclusions of law to which no response is required. Any allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue.**

19. At all relevant times as a Plan fiduciary, Tiara Yachts knew that BCBSM paid non-participating providers at the full amount of the amount charged.

**ANSWER: The allegations in Paragraph 19 purport to state conclusions of law to which no response is required. Any allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue, including, but not limited to, the allegation that Tiara Yachts somehow knew BCBSM paid non-participating providers at the full amount of the amount charged.**

20. At all relevant times as a Plan fiduciary, Tiara Yachts knew that BCBSM received 30% of fees recovered through the SSP.

**ANSWER: The allegations in Paragraph 20 purport to state conclusions of law to which no response is required. Any allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue.**

21. At all relevant times as a Plan fiduciary, Tiara Yachts had access to claims data on a periodic basis.

**ANSWER: The allegations in Paragraph 21 purport to state conclusions of law to which no response is required. Any allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue.**

22. If the Court concludes that BCBSM breached its fiduciary duties through its processing of claims for the Plan and its implementation of the SSP, BCBSM is entitled to contribution from Tiara Yachts under ERISA and federal ERISA common law for any harm to the Plan because Tiara Yachts failed to exercise care, skill, prudence, and diligence in its oversight of BCBSM and otherwise in connection with its provision of services under the ASC.

**ANSWER: The allegations in Paragraph 22 purport to state conclusions of law to which no response is required. Tiara Yachts further denies any responsibility for BCBSM's alleged misconduct and denies that BCBSM is entitled to any relief whatsoever. Any other allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue.**

## **Count II Indemnification**

23. BCBSM incorporates by reference Paragraphs 1 – 22.

**ANSWER: Tiara Yachts incorporates by reference its responses to Paragraphs 1–22 as if fully set forth herein.**

24. Under Article V § B of the ASC, Tiara Yachts agreed to "indemnify, defend and hold BCBSM harmless from any claims resulting from [Tiara Yachts'] breach of any term of [the ASC]

and/or breach of any obligation or duty not expressly delegated to BCBSM in [the ASC], including, but not limited to, [Tiara Yachts'] obligation . . . to read and understand the terms of this Contract."

ECF No. 12-2, PageID.150.

**ANSWER: The allegations in Paragraph 24 purport to state conclusions of law to which no response is required. Admitted that the quoted terms are contained in the ASC. Tiara Yachts further states that the ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 24 are inconsistent with that document or mischaracterize that document, Tiara Yachts denies those allegations as untrue. In further response, Tiara Yachts breached no term of the ASC or any other obligation it had to the Plan or Plan participants. Moreover, any purported indemnity obligation that BCBSM is attempting to rely upon from the ASC, or any other agreement, to relieve BCBSM from responsibility or liability for its own fiduciary breaches and violations of ERISA is void as violative of federal law and public policy.**

25. This indemnification provision expressly survived termination of the ASC.

**ANSWER: The allegations in Paragraph 25 purport to state conclusions of law to which no response is required. Admitted that the allegations in Paragraph 25 purport to summarize and/or characterize portions of the ASC. Tiara Yachts further states the ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 25 are inconsistent with that document, Tiara Yachts denies those allegations as untrue.**

26. Tiara Yachts is obligated to "indemnify" BCBSM to the extent the claims against BCBSM are a result of Tiara Yachts not understanding the terms of the ASC, including with respect to the payment of amounts charged by non-participating providers and the SSP.



**ANSWER: The allegations in Paragraph 26 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts denies the allegations contained in Paragraph 26 as untrue. In further response, BCBSM cannot state a claim for indemnity; any purported indemnity obligation that BCBSM is attempting to rely upon from the ASC, or any other agreement, to relieve BCBSM from responsibility or liability for its own fiduciary breaches and violations of ERISA is void as violative of law and public policy.**

27. Tiara Yachts further is obligated to indemnify BCBSM to the extent the alleged losses are a result of its own breaches of the ASC, including, for example, its obligation pursuant to Article II § D of the ASC, ECF No. 12-2, PageID.142, to "notify BCBSM in writing of any Claim that [Tiara Yachts] disputes within 60 days of [its] access to a paid Claims listing."

**ANSWER: The allegations in Paragraph 27 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts denies the allegations contained in Paragraph 27 as untrue. In further response, BCBSM cannot state a claim for indemnity; any purported indemnity obligation that BCBSM is attempting to rely upon from the ASC, or any other agreement, to relieve BCBSM from responsibility or liability for its own fiduciary breaches and violations of ERISA is void as violative of law and public policy.**

28. On information and belief, Tiara Yachts did not review claims data provided by BCBSM as it was provided.

**ANSWER: Denied as untrue. The allegations in this paragraph presume that claims data was provided by BCBSM to Tiara Yachts, which is not true.**

29. Tiara Yachts never exercised its audit rights to review claims data.

**ANSWER:** Denied as untrue. The allegations in this paragraph presume that true audit rights existed under the ASC (as opposed to federal law), which is not true. In further response, there is nothing in the ASC that gave Tiara Yachts true audit rights, but rather the ASC attempted to curtail the rights of Tiara Yachts to fully audit BCBSM's administration of healthcare claims; BCBSM failed to provide Tiara Yachts with its claims data and any limits on purported audit rights BCBSM claims existed in the ASC, including in Paragraph G of Article II of the ASC, are void as violative of federal law and public policy.

30. Moreover, to the extent Tiara Yachts now claims it did not understand the SSP or otherwise failed to understand the import of the terms of the ASC, then it is required under the ASC to hold BCBSM harmless from any recovery by the Plan, if any.

**ANSWER:** The allegations in Paragraph 30 purport to state conclusions of law to which no response is required. Tiara Yachts denies responsibility for BCBSM's alleged misconduct and denies that BCBSM is entitled to any relief whatsoever. Any other allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue.

**Count III  
Breach of ASC Release**

31. BCBSM incorporates by reference Paragraphs 1 – 30.

**ANSWER:** Tiara Yachts incorporates by reference its responses to Paragraphs 1–30 as if fully set forth herein.

32. Tiara Yachts and BCBSM terminated their relationship in December 2018.

**ANSWER:** Admitted.

33. Under the ASC, upon notice of termination and expiration of a Transition Assistance Period, BCBSM would prepare a final settlement that refunded any positive balance to Tiara Yachts. ECF No. 12-2, PageID.149-150 Art. IV § B.

**ANSWER:** The allegations in Paragraph 33 purport to state conclusions of law to which no response is required. Admitted only that the allegations in Paragraph 33 purport to summarize and/or characterize what BCBSM was expected to perform under the ASC. Tiara Yachts further states the ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 33 are inconsistent with that document, Tiara Yachts denies those allegations as untrue. In further response, denied as untrue that BCBSM has refunded what is due to Tiara Yachts.

34. The parties expressly agreed in the ASC that this final settlement payment would "fully and finally settle, release, and discharge each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported, adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other forms of money due and owing between the parties and arising under" the ASC. *Id.*, PageID.150 Art. IV § B.6.

**ANSWER:** The allegations in Paragraph 34 purport to state conclusions of law to which no response is required. Admitted only that the allegations in Paragraph 34 purport to summarize, quote, and/or characterize portions of the ASC. Tiara Yachts further states the ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 34 are inconsistent with or mischaracterize that document, Tiara Yachts denies those allegations as untrue. In further response, denied as untrue that BCBSM refunded what Tiara Yachts is due. Moreover, any purported release or waiver provision that would relieve BCBSM from responsibility or liability for its own fiduciary breaches or violations of ERISA is void as violative of federal law and public policy.

35. Under that provision of the ASC, in April 2021, BCBSM issued a final settlement and refund in the amount of \$52,950 to Tiara Yachts (the "Settlement Refund").

**ANSWER: Tiara Yachts denies the allegations in Paragraph 35 as stated. In further response, BCBSM's characterization of the April 2021 payment is untrue, and any allegation that BCBSM refunded what Tiara Yachts is due is also untrue.**

36. By signing the ASC refund summary, Tiara Yachts agreed that the Settlement Refund "fully and finally settles, releases and discharges each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported (IBNR), adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other sums of money due and owing between the parties and arising under" the ASC. Exhibit A.

**ANSWER: The allegations in Paragraph 36 purport to state conclusions of law to which no response is required. Admitted only that the allegations in Paragraph 36 purport to summarize, quote, and/or characterize portions of Exhibit A to BCBSM's Counterclaims. Tiara Yachts further states that Exhibit A to BCBSM's Counterclaims is a written document that speaks for itself. To the extent the allegations in Paragraph 36 are inconsistent with or mischaracterize that document, Tiara Yachts denies those allegations as untrue. In further response, Tiara Yachts denies as untrue that it has settled, released, or discharged its claims against BCBSM at issue in this case. Moreover, any purported release or waiver provision that would relieve BCBSM from responsibility or liability for its own fiduciary breaches or violations of ERISA is void as violative of law and public policy.**

37. In furtherance of this agreement and in exchange for its release of any such claims, Tiara Yachts accepted the Settlement Refund.

**ANSWER: The allegations in Paragraph 37 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts denies**

**the allegations contained in Paragraph 37 as untrue. Further responding, denied as untrue that BCBSM has refunded what Tiara Yachts is due.**

38. The ASC constituted a valid and enforceable contract between BCBSM and Tiara Yachts.

**ANSWER: The allegations in Paragraph 38 purport to state conclusions of law to which no response is required. Any allegation BCBSM purports to make of wrongdoing by Tiara Yachts is denied as untrue.**

39. On account of the Settlement Refund, BCBSM fully performed its obligations under Article IV Section B.6 of the ASC with respect to the final settlement of claims.

**ANSWER: The allegations in Paragraph 39 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts denies the allegations contained in Paragraph 39 as untrue.**

40. Tiara Yachts' claims of breaches of fiduciary duty and prohibited transactions arise under the ASC because they are based on BCBSM's processing of claims and the SSP.

**ANSWER: The allegations in Paragraph 40 purport to state conclusions of law to which no response is required. Any other allegation BCBSM makes of wrongdoing by Tiara Yachts is denied as untrue. In further response, Tiara Yachts' claims of breaches of fiduciary duty and prohibited transactions arise under ERISA, including BCBSM's statutory and fiduciary obligations stated therein or derived therefrom. Whether BCBSM broke its promises in the ASC, among other breaches, does not transform Tiara Yachts' claim into one under contract rather than ERISA specifically and federal law more generally.**

41. The release under Article IV Section B.6 of the ASC therefore extends to Tiara Yachts' claims against BCBSM.

**ANSWER:** The allegations in Paragraph 41 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts denies the allegations contained in Paragraph 41 as untrue. In further response, Tiara Yachts' claims of breaches of fiduciary duty and prohibited transactions arise under ERISA, including BCBSM's statutory and fiduciary obligations stated therein or derived therefrom. Whether BCBSM broke its promises in the ASC, among other breaches, does not transform Tiara Yachts' claim into one under contract rather than ERISA specifically and federal law more generally.

42. By bringing these claims, Tiara Yachts breached the terms of the valid and enforceable release under the ASC and caused BCBSM to incur unnecessary and avoidable costs, expenses, and other harms.

**ANSWER:** The allegations in Paragraph 42 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Tiara Yachts denies the allegations contained in Paragraph 42 as untrue. Moreover, Tiara Yachts denies that BCBSM is entitled to any relief whatsoever. In further response, Tiara Yachts' claims of breaches of fiduciary duty and prohibited transactions arise under ERISA, including BCBSM's statutory and fiduciary obligations stated therein or derived therefrom. Whether BCBSM broke its promises in the ASC, among other breaches, does not transform Tiara Yachts' claim into one under contract rather than ERISA specifically and federal law more generally.

Respectfully submitted,

**VARNUM LLP**

*Attorneys for Tiara Yachts, Inc.*

Dated: September 25, 2025

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### **ADDITIONAL DEFENSES**

By asserting the defenses as set forth below, Tiara Yachts does not allege or admit it has the burden of proof or the burden of persuasion regarding any of them. Without admitting any wrongful conduct and while reserving its right to assert other defenses as this action proceeds, Tiara Yachts hereby states the following additional defenses:

#### **First Additional Defense**

BCBSM's claims for relief under Count I (Co-Fiduciary Liability under ERISA) and Count II (Indemnification) of its Counterclaims are barred, in whole or in part, because they fail to state claims upon which relief can be granted against Tiara Yachts. In support of this additional defense, Tiara Yachts states that such causes of action—co-fiduciary liability (i.e., contribution) and indemnification—are not cognizable claims under ERISA or federal common law. In particular, claims for contribution and indemnification are not available for many reasons, including, but not limited to: (a) when a breaching party is a fiduciary under ERISA, as BCBSM is; (b) where the proposed contributor is not a joint tortfeasor, or otherwise did not cause the alleged injury; and (c) when the alleged wrongdoer, in this case BCBSM, breached its fiduciary duties in bad faith and is substantially more at fault for the plaintiff's losses. Furthermore, courts in the Sixth Circuit routinely decline to recognize such causes of action in ERISA actions and have explicitly held that ERISA does not provide for the remedy of contribution or indemnification by alleged co-fiduciaries.

#### **Second Additional Defense**

BCBSM's claim for relief under Count III (Breach of ASC Release) of its Counterclaims is barred, in whole or in part, because BCBSM fails to state a claim upon which relief can be granted against Tiara Yachts. In support of this additional defense, Tiara Yachts states that such



cause of action fails to state a claim upon which relief can be granted because any purported contractual waiver or release is void as a matter of law; is inapplicable to Tiara Yachts' ERISA claims; does not represent the intent of the parties, as both parties did not intend for a release to cover claims arising from ERISA's statutory obligations; and such release is otherwise invalid as a matter of law.

### **Third Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because any purported release, indemnity, or contribution obligation that would relieve BCBSM from responsibility or liability for its own fiduciary breaches or violations of ERISA is void under 29 U.S.C. § 1110(a) (ERISA § 410(a)) and contrary to public policy.

### **Fourth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because such claims fail for lack of causation and/or because of superseding misconduct. BCBSM's alleged acts or omissions, including its own breaches of its fiduciary obligations and abuse of its discretionary control over Tiara Yachts' Plan assets and administration, are the sole or superseding cause of harm to the Plan.

### **Fifth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM has suffered no injury in fact as a result of any acts or omissions by Tiara Yachts.

### **Sixth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, by the doctrines of unclean hands and/or equitable estoppel by reason of BCBSM's own

acts, admissions, representations, and courses of conduct, which Tiara Yachts was led to rely upon, and did rely upon, to its detriment.

**Seventh Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because Tiara Yachts' performance of any contractual provisions, if any, was excused or prevented by BCBSM's failure to perform one or more conditions precedent under the ASC, including, but not limited to, providing Tiara Yachts with its claims data and/or with accurate and complete information.

**Eighth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because Tiara Yachts' performance of any contractual provisions, if any, was excused or prevented by BCBSM's conduct and/or prior material breaches of its obligations.

**Ninth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM has suffered no harm or damages for which Tiara Yachts is or could be liable.

**Tenth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because any damages BCBSM is seeking under its Counterclaims, which are denied as factually and legally deficient, would be subject to set-off by Tiara Yachts' claims (made on behalf of the Plan), with Tiara Yachts' damages to be recovered for the Plan greatly exceeding any alleged damage to BCBSM.

**Eleventh Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because any ambiguity in the ASC, Schedules, or purported release/indemnity provisions must be construed against BCBSM as drafter, and being strictly construed they do not extend to an indemnitee's own negligence or misconduct.

**Twelfth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, by the doctrines of *in pari delicto*, estoppel, and/or greater fault. BCBSM, as the party with discretionary control over claims adjudication and SSP implementation, bears far greater (indeed, exclusive) fault; no equitable contribution or indemnity is available.

**Thirteenth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM failed to mitigate any alleged damages or costs arising from its own conduct, barring or reducing any recovery.

**Fourteenth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, by the applicable laches, and statutes of limitations and/or repose under Michigan or federal law, to the extent they accrued prior to the limitations period and are not saved by any tolling doctrine.

**Fifteenth Additional Defense**

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM's alleged damages are speculative, unrecoverable, or not cognizable as a matter of law.

Plaintiff/Counter-Defendant Tiara Yachts reserves the right to add additional defenses made known to it through discovery in this matter.

Tiara Yachts respectfully seeks judgment regarding BCBSM's Counterclaims (Counts I-III) as follows:

- A. That BCBSM is not entitled to any relief or recovery for its Counterclaims;
- B. That BCBSM's Counterclaims against Tiara Yachts are dismissed in their entirety with prejudice;
- C. That Tiara Yachts is awarded all costs and attorney's fees to which it is entitled in defending against BCBSM's Counterclaims; and
- D. That Tiara Yachts is awarded such other and further relief, whether legal or equitable, as this Court may deem just and proper.

Respectfully submitted,

**VARNUM LLP**

*Attorneys for Tiara Yachts, Inc.*

Dated: September 25, 2025

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