

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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.

PLAINTIFF'S APPEAL OF THE MAGISTRATE JUDGE'S
OCTOBER 9, 2025, ORDER (ECF NO. 109)

I. INTRODUCTION

Tiara Yachts, Inc. (“Tiara Yachts”) respectfully appeals the portion of the Magistrate Judge’s October 9, 2025, Order (ECF No. 109, PageID.1840-41) limiting each party to thirty requests for production of documents under FED. R. CIV. P. 34. *See* W.D. Mich. LCivR 72.3(a).

The numerical cap imposed by the Magistrate Judge’s Order is not provided for in the Federal Rules of Civil Procedure; was not provided for in the Case Management Order for this case; was not sought by Blue Cross Blue Shield of Michigan (“BCBSM”) in any manner, whether via objection to Tiara Yachts’ initial discovery requests or in briefing regarding its refusal to produce any records; and otherwise, was imposed *sua sponte* without regard to the complexity of this matter nor any record-based finding that the limit is necessary to secure the proportionality needs of discovery under the Federal Rules of Civil Procedure.

While Tiara Yachts intends to proceed in discovery efficiently and proportionally, and while on this date it is propounding fewer than thirty document requests per the Magistrate Judge’s Order, it should not be unduly restricted at the outset by an arbitrary cap divorced from the case’s evolving discovery needs or Rule 26(b)(1)’s proportionality factors. Accordingly, Tiara Yachts asks the Court to set aside the numerical cap imposed by the Magistrate Judge’s Order.

II. MATERIAL FACTUAL BACKGROUND & PROCEDURAL HISTORY

Following remand from the Sixth Circuit and this Court’s instruction to proceed with discovery (Transcript, ECF No. 81, PageID.1310:13-16), Tiara Yachts served its first set of discovery requests on August 4, 2025, including eleven interrogatories and sixty-three requests for production of documents (“Discovery Requests”). *See* Tiara Yachts Mot. to Compel, Ex. D (ECF No. 87-4, PageID.1504-1524).

Before BCBSM's responses were due, Tiara Yachts sent BCBSM a letter inviting discussion regarding its Discovery Requests to streamline production, confirming it was seeking only relevant information and proposing to stipulate to the entry of a mutually agreeable order to address confidentiality concerns. *See* 8/22/2025 Letter (ECF No. 87-5, PageID.1526-1528); 9/8/2025 E-mail and Attachment (ECF No. 87-7, PageID.1590). BCBSM ignored the invitation. Instead, BCBSM responded with boilerplate objections, produced nothing, and then filed a motion for a protective order addressing breadth, timeframe, and topic-specific issues, ***but did not object to the number of Rule 34 requests, did not seek a numerical cap, and did not contend the mere count of requests was improper.*** BCBSM's Mot. for PO (ECF No. 82, PageID.1318-1363). In parallel, Tiara Yachts moved to compel discovery (ECF No. 86) and compel depositions (ECF No. 91); BCBSM filed a motion for a protective order regarding the depositions (ECF No. 89).

At the October 7, 2025, hearing on the pending discovery motions, the Magistrate Judge, citing general experience and the principles underlying Rules 1 and 26 of the Federal Rules of Civil Procedure, imposed a cap of thirty document requests under Rule 34 per side and directed Tiara Yachts to select thirty of its existing requests to serve as its operative requests, with no relief to rephrase or redraft the already served requests. 10/8/25 Transcript, 5:14-18 (ECF No. 108, PageID.1833) (Mr. Rynders: "... Can I rephrase? The Court: No. You can pick.... Pick 30."). The Court otherwise granted Tiara Yachts' motion to compel depositions. *Id.* (PageID.1835-38).

On October 9, 2025, the Magistrate Judge's bench rulings were effectuated by a written Order, whereby "upon further reflection" Tiara Yachts was allowed to reformulate its Discovery Requests but was still limited to only thirty document requests in this case. 10/09/2025 Order, (ECF No. 109, PageID.1840-41). The Case Management Order in this case does not contain any limitation on the number of Rule 34 requests (ECF No. 80, PageID.1296), and the parties did not

stipulate to such a limitation. And in the extensive briefing on the discovery issues, BCBSM never raised, briefed, objected, or otherwise requested that Tiara Yachts be limited in the number of Rule 34 requests it can make. BCBSM's Mot. for PO (ECF No. 82, PageID.1318-1363).

III. GOVERNING LEGAL STANDARD

"When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision." FED. R. CIV. P. 72(a) (Nondispositive Matters). "Any party may appeal from a magistrate judge's order determining any motion or matter within fourteen (14) days after service of the magistrate judge's order." W.D. Mich. LCivR 72.3(a) (Appeal of nondispositive matters); *see also* FED. R. CIV. P. 72(a).

Reversal of a magistrate judge's order is proper when it is shown that the decision is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a). "[A] finding is 'clearly erroneous' when[,] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). "An order is 'contrary to the law' when it 'fails to apply or misapplies relevant statutes, case law, or rules of procedure.'" *Bisig v. Time Warner Cable, Inc.*, 940 F.3d 205, 219 (6th Cir. 2019).

IV. ARGUMENT

A. THE NUMERICAL CAP IS CONTRARY TO THE FEDERAL RULES OF CIVIL PROCEDURE FOR DISCOVERY.

Rule 34 of the Federal Rules of Civil Procedure contains no numerical limit on the requests for production of documents ("RFPs") that a party may serve. FED. R. CIV. P. 34(a)-(c). In stark

contrast, the Federal Rules of Civil Procedure expressly provide numeric caps where intended. See e.g., FED. R. CIV. P. 30 (a)(2)(A)(i) (presumptive limit of 10 depositions); FED. R. CIV. P. 33(a)(1) (presumptive limits of 25 for interrogatories). Under the Federal Rules, the only limitation on RFPs submitted pursuant to Rule 34 is that the requests conform to the scope of discovery allowed by Fed. R. Civ. P. 26. See *Artist Revenue Advocs., LLC v. West*, No. 2:24-CV-06018-MWC-BFM, 2025 WL 2014313, at *4 (C.D. Cal. May 19, 2025) (“Rule 34 does not impose a numerical limit on the number of RFPs parties may serve...The number of RFPs is thus limited only by Rule 26, which requires requests to be proportional to the needs of the case.”); *Young v. United Fin. Cas. Co.*, No. CV 23-707, 2024 WL 863886, at *5 (E.D. La. Feb. 29, 2024) (“Unlike Rule 33, Rule 34 does not impose a numerical limit on requests for production.”); *Gillani Consulting, Inc. v. Ferguson Enters., Inc.*, No. 3:07-CV-1488-O, 2008 WL 11425717, at *3 (N.D. Tex. Nov. 10, 2008) (upholding the magistrate judge’s order which rejected the defendants’ objections and characterization that plaintiff’s forty-two RFPs were “excessive” and explaining that “there is no limit on the number of requests for production that a party can propound.”); *Casey v. Gillson Trucking, Inc.*, No. 2:23-CV-00228-ABJ, 2025 WL 1135409, at *3 (D. Wyo. Apr. 17, 2025) (“In contrast to Rule 33, Rule 34 contains no numerical limit on requests for production...” but is subject to Rule 26’s proportionality limitations).¹

¹ 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. Notwithstanding, this Court has held before that out-of-circuit and unpublished “[n]on-binding decisions can have great utility when binding decisions on the contested issue are scarce.” *Smith v. Astrue*, 639 F. Supp. 2d 836, 842 (W.D. Mich. 2009). In particular, this Court may follow and even “regularly discusses nonprecedential decisions when they can illuminate an issue” provided such out-of-circuit or unpublished cases “employ logical reasoning,” are “internally consistent,” and “comport with the letter and spirit of the binding precedents.” *Id.* at 841-42. Tiara Yachts’ counsel submits that the foregoing decisions it cites in this motion meet such standards and should be considered.

Under Rule 26, “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). In that sense, “a party *may serve any number of relevant requests for production so long as they are ‘proportional to the needs of the case.’*” *Barr v. NXG Transp., LLC*, No. 2:24-CV-02135-MEF, 2025 WL 2654907, at *2 (W.D. Ark. Sept. 16, 2025) (emphasis added); *see also* Wright & Miller, 8B Fed. Prac. & Proc. Civ. § 2206 (3d ed.) (“Rule 34 is as broad in scope as any of the discovery devices” and its limits are only those “defined by Rule 26.”). Even the text of Fed. R. Civ. P. 26(b)(2) provides that only “the number of depositions and interrogatories” or the “number of requests under Rule 36” (i.e., Requests for Admission) may be limited in **number** by Court order.

Against that backdrop, the Magistrate Judge’s imposition of a fixed numerical ceiling on the number of Rule 34 RFPs that Tiara Yachts or BCBSM may submit in this case, absent any rule-based or case-specific foundation, is contrary to and misapplies the Federal Rules of Civil Procedure. Here, neither the Magistrate Judge’s Order, nor the transcript of the October 7, 2025, hearing support that the thirty-request limit is supported by law or the Federal Rules of Civil Procedure. Instead, the Magistrate Judge’s decision was based on the Magistrate Judge’s own experience with “a thousand case management orders,” without regard to the specific needs, issues, and complexities that underly this case—including any substantive discussion or argument on the issues raised by the parties in their briefing. *See* 10/8/25 Transcript, 3:10-25 (ECF No. 108, PageID.1829-1831).

That is improper. *See Artist Revenue Advocs., LLC v. West*, No. 2:24-CV-06018-MWC-BFM, 2025 WL 2014313, at *4 (C.D. Cal. May 19, 2025) (“The number of RFPs is [] limited only by Rule 26, which requires requests to be proportional to the needs of the case. Defendants offer no specific argument why the **number** of RFPs is disproportionate to the needs of the case. In the

absence of specific arguments that specific requests are an overreach, Plaintiff's requests do not strike the Court as overbroad.") (emphasis added).

Therefore, Tiara Yachts respectfully requests that this Court set aside the numerical cap imposed by the Magistrate Judge's Order (ECF No. 109). It is contrary to the Federal Rules of Civil Procedure and is an unwarranted limit on discovery in this case, which has only just begun.

B. THE RECORD IS DEVOID OF ANALYSIS THAT THE NUMERICAL CAP IS PROPORTIONAL TO THE NEEDS OF THIS CASE.

Rule 26(b) demands a case-specific proportionality analysis if a party is going to be limited in discovery. *Young v. United Fin. Cas. Co.*, No. CV 23-707, 2024 WL 863886, at *5 (E.D. La. Feb. 29, 2024) ("Unlike Rule 33, Rule 34 does not impose a numerical limit on requests for production[,] [but] Plaintiff's requests, [] are subject to the relevance and proportionality standards set forth in Rule 26."); *Artist Revenue Advocs., LLC v. West*, No. 2:24-CV-06018-MWC-BFM, 2025 WL 2014313, at *4 (C.D. Cal. May 19, 2025) ("Rule 34 does not impose a numerical limit on the number of RFPs parties may serve...The number of RFPs is thus limited only by Rule 26, which requires requests to be proportional to the needs of the case.").

In this case, no such analysis was completed before the imposition of a numeric cap was imposed on the party's discovery devices. While Tiara Yachts acknowledges that the Magistrate Judge explained that his decision would be "informed by two rules of the Federal Rules of Civil Procedure"—Rule 26 and Rule 1—the record reveals there was no analysis, let alone argument by either party on how those rules support a numeric cap to the number of document requests that Tiara Yachts or BCBSM may submit in this case. 10/8/25 Transcript, 3:10-25 (ECF No. 108, PageID.1831). Rather, the Magistrate Judge's decision was based on the Magistrate Judge's experience with "a thousand case management orders," without regard to the specific needs, issues, and complexities that underly this case. *Id.* at 4:1-16 (PageID.1832).

That does not suffice. Indeed, Tiara Yachts in its briefing pointedly identified for this Court how BCBSM had previously objected to providing much of what was sought here in a similar case, *Comau v. BCBSM*, No. 19-cv-12623, Order (E.D. Mich. Apr. 19, 2021) (ECF No. 87, PageID.1431; ECF No. 87-1, PageID.1447-1449). The court in *Comau* rejected BCBSM's arguments and granted Comau's motion to compel discovery, resulting in BCBSM being ordered to "produce all categories of information it is trying to withhold in this case" – ***without regard to any cap on the number of Rule 34 requests sought***. (ECF No. 87, PageID. 1433; ECF No. 87-1, PageID.1447-1449). BCBSM has what Tiara Yachts is seeking. It was previously ordered to provide such information in a prior case, and it did provide such information in that prior case. BCBSM neither argued nor raised as an issue for this Court that ***the number*** of document requests sought by Tiara Yachts in this case was improper. Therefore, the record does not support that a numerical limit is proportional to the needs in this case.

Additionally, the Case Management Order (ECF No. 80) in this case itself contains no such numerical limitation, and the record contains no finding that Rule 26(b)'s devices for narrowing discovery should BCBSM, in the future, take issue with any of Tiara Yachts' document requests would be inadequate. To the contrary, the Magistrate Judge's Order explicitly requires in-person meet-and-confer obligations on the pending discovery items and even invited motion practice to resolve any of BCBSM's remaining objections—which are precisely the tools the Federal Rules contemplate for limiting and addressing the proportionality and burden concerns related to document requests under Rule 34 in the first place. Fed. R. Civ. P. 26(b)(1).

Accordingly, Tiara Yachts respectfully requests that this Court set aside the numerical cap imposed by the Magistrate Judge's Order (ECF No. 109).

V. CONCLUSION

For the foregoing reasons, Tiara Yachts requests that this Court set aside the portion of the October 9, 2025, Order limiting each party to thirty document requests as it is clearly erroneous and contrary to law and the application of the Federal Rules of Civil Procedure.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to L. Civ. R. 7.3(b)(i), I hereby certify that this document complies with the word count and page limits for brief set forth in L. Civ. R. 7.3(b)(ii), as this document contains 2,358 words.

/s/ Perrin Rynders

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