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/COUNTER-DEFENDANT'S MOTION TO COMPEL THE DEPOSITIONS OF DIANNE MALMGREN AND ROBERT HOPPER AND FOR SANCTIONS

Plaintiff/Counter-Defendant Tiara Yachts, Inc. ("Tiara Yachts"), through its attorneys, VARNUM LLP, hereby moves this Court for an order compelling Defendant/Counter-Plaintiff, Blue Cross Blue Shield of Michigan ("BCBSM") to produce Dianne Malmgren and Robert Hopper for deposition, and for sanctions against BCBSM for its bad faith obstruction of discovery.

Tiara Yachts respectfully requests that the Court enter an order: (1) compelling BCBSM to produce Dianne Malmgren and Robert Hopper for deposition within fourteen (14) days of the Court's order; (2) imposing sanctions against BCBSM under Federal Rule of Civil Procedure 37(d) and 37(a)(5) for its bad faith conduct, including an award of Tiara Yachts' reasonable attorneys' fees and costs incurred in connection with this Motion and the delayed depositions; and (3) imposing such additional sanctions as the Court deems appropriate to deter BCBSM's continued pattern of discovery obstruction. In support of this Motion, Tiara Yachts submits and incorporates the accompanying brief by reference.

Respectfully submitted,

VARNUM LLP
Attorneys for Tiara Yachts, Inc.

Dated: September 8, 2026

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BRIEF IN SUPPORT OF PLAINTIFF/COUNTER-DEFENDANT'S MOTION TO COMPEL THE DEPOSITIONS OF DIANNE MALMGREN AND ROBERT HOPPER AND FOR SANCTIONS

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I. INTRODUCTION

Tiara Yachts, Inc. ("Tiara Yachts") properly noticed depositions of key Blue Cross Blue Shield of Michigan ("BCBSM") witnesses regarding the payment integrity lapses prevalent in BCBSM's claims processing system. The day before the depositions were to begin, BCBSM filed a sham "Emergency Motion for a Protective Order." The Court reviewed the Motion, determined there was no emergency, and denied giving BCBSM the protective order it requested. The Court later dismissed the Motion as moot under the assumption the depositions went forward. But they did not. After waiting until the day before the depositions to bring its Motion, BCBSM unilaterally cancelled the depositions, informing Tiara Yachts that the witnesses would not appear. BCBSM granted itself the relief it was ultimately denied before the Court had a chance to rule—which is why BCBSM waited to the last minute to file in the first place.

The deposition testimony sought is relevant. The witnesses are BCBSM employees responsible for addressing claims processing errors. They are knowledgeable about a wide range of problems BCBSM experiences with its claims adjudication. BCBSM should be compelled to produce its witnesses and sanctioned for its delay of the discovery process.

II. BACKGROUND

A. TIARA YACHTS' CLAIMS.

Tiara Yachts brought this lawsuit against BCBSM to recover millions of dollars in overpayments caused by BCBSM's derelict administration of Tiara Yachts' self-funded ERISA health benefit plan (the "Plan"). Tiara Yachts sponsors a self-funded ERISA health benefit Plan through which Tiara Yachts—not an insurer—pays for its employees' healthcare claims. Tiara Yachts, like most self-funded employers, contracts with a claims administrator to adjudicate, process, and pay all healthcare claims. Here, Tiara Yachts engaged BCBSM as its Plan's claims administrator.

As claims administrator, BCBSM had broad discretion and control over the administration of the Plan, including the adjudication and payment of claims from Plan Assets. *Tiara Yachts, Inc. v. BCBSM*, 138 F.4th 457, 466 (6th Cir. 2025). This makes BCBSM a fiduciary under ERISA. *Saginaw Chippewa Indian Tribe of Mich. v. BCBSM*, 32 F.4th 548, 563 (6th Cir. 2022) (*SCIT*) (controlling and "failing to preserve plan assets" gives rise to fiduciary duties); *Rozo v. Principal Life Ins. Co.*, 949 F.3d 1071, 1074 (8th Cir. 2020) ("A service provider may be a fiduciary when it exercises discretionary authority, even if the contract authorizes it to take the discretionary act."); *Hi-Lex Controls v. BCBSM*, 751 F.3d 740, 745-46 (6th Cir. 2014) (when "BCBSM held plan assets of the Hi-Lex Health Plan [it] functioned as an ERISA fiduciary."); *Guyan Int'l, Inc. v. Prof'l Benefits Adm'rs, Inc.*, 689 F.3d 793, 798 (6th Cir. 2012) ("[A]n entity that exercises any authority or control over disposition of a plan's assets becomes a fiduciary.").

In violation of its fiduciary duties, BCBSM deployed a claims-processing system rife with defects that inflate, misdirect, mis-adjudicate, and overpay claims. There are three categories of damages at issue in this case that Tiara Yachts has suffered because of these violations of BCBSM's fiduciary duties:

1. Payment Integrity

The "Payment Integrity" damages stem from BCBSM's repeated failures to properly adjudicate claims submitted by providers, causing Tiara Yachts to pay claims that should not have been paid for a variety of reasons. For example, BCBSM paid identical bills for the same service; paid for routine services at exorbitant rates; paid claims that were years old, after BCBSM's own claims submission deadline; and paid claims lacking necessary backup information. Tiara Yachts' experts have identified at least 2,317 specific claims that BCBSM overpaid, costing Tiara Yachts millions of dollars.

2. Shared Savings Program

The second category of damages arises from fees BCBSM collected under the inaptly named "Shared Savings Program" ("SSP"). Tiara Yachts paid BCBSM to administer its Plan, and BCBSM had an obligation to process claims properly. Instead of doing its job and processing claims correctly (see above), BCBSM used third parties to catch BCBSM's mistakes. But if BCBSM processed claims correctly, there would be no mistakes to catch.

Catching mistakes would be good, except that every time a third party did so BCBSM kept part of what was recovered as an "SSP fee." BCBSM received no additional fee when it processed a claim correctly—only when it processed a claim incorrectly and the third-party review caught the mistake. Thus, BCBSM was incentivized to do a poor job administering Tiara Yachts' claims. Every time it made a mistake, that opened the door for BCBSM to collect an additional fee. This conflict of interest between Tiara Yachts and BCBSM, its fiduciary, is why the Sixth Circuit viewed the SSP program as involving prohibited transactions under ERISA. *See Tiara Yachts*, 138 F.4th 457, 470 ("Tiara Yachts has plausibly alleged that BCBSM acted as an ERISA fiduciary by exercising discretion over its own compensation for the SSP."). According to the information provided by BCBSM in discovery, Tiara Yachts was charged over $16,000 in SSP fees.

3. Flip-Logic

The third category of damages arose from BCBSM's "Flip-Logic" system. BCBSM implemented Flip-Logic in 1997: when a claim was submitted by a non-participating provider, BCBSM's system would "flip" the non-participating provider's status and pay the claim at charge. That is, it would pay whatever was charged, whether the claim was reasonable or not, fraudulent or not. Internal emails reveal that BCBSM knew Flip-Logic allowed "providers [to] bill and get fully reimbursed for highly inflated cost of services," ECF No. 1-2, PageID.27, that "'Flipping' logic is in direct contradiction with the group-elected benefit," ECF No. 1-4, PageID.41, and that BCBSM had a "fiduciary responsibility to [its] ASC customers" and that its "lack of control over the issue [would be] viewed as a failure to fulfill this responsibility." ECF No. 1-2, PageID.27. According to what BCBSM produced in discovery, Tiara Yachts paid approximately $5,000 in claims improperly processed at charge because of the Flip-Logic system.

B. TIARA YACHTS ATTEMPTS TO DEPOSE KEY BCBSM WITNESSES.

Tiara Yachts properly noticed the depositions of Robert Hopper and Dianne Malmgren—two BCBSM witnesses with personal knowledge of the claims processing failures at the heart of this case (not just SSP fees and Flip-Logic, but Payment Integrity failures more generally). Robert Hopper is BCBSM's Director of Account Services and Segment Administration. Dianne Malmgren was its Manager of Benefit Administration. Hopper and Malmgren were part of BCBSM's internal workgroup that investigated Flip-Logic[1] because of their responsibilities for payment integrity more broadly. Tiara Yachts served the deposition notices on July 20, 2026, setting the depositions to take place on August 25 and 26—dates provided by BCBSM.

C. BCBSM EMPLOYS GAMESMANSHIP TO OBSTRUCT THE DEPOSITIONS.

Despite knowing about the depositions for over a month, BCBSM neither objected nor acted until August 24—the day before the depositions were to take place. On the eve of the depositions, BCBSM filed a last-minute "Emergency" Motion for Protective Order, purportedly because Tiara Yachts' damages caused by the SSP program and Flip-Logic are too modest.

[1] Robert Hopper drafted the email acknowledging that BCBSM has a "fiduciary responsibility to [its] ASC customers" and that its "lack of control over the [Flip-Logic] issue [would be] viewed as a failure to fulfill this responsibility." ECF No. 1-2, PageID.27.

BCBSM's framing of its Motion as an "emergency" is disingenuous. It knew about the depositions for weeks. And BCBSM had known the extent to which Tiara Yachts was harmed by the SSP program and Flip-Logic for years. There was no new or pressing information that came to light on August 24th that triggered an "emergency" motion. Instead, BCBSM waited until the day before to minimize the chance that its Motion could be denied before the depositions were set to start. In fact, BCBSM had no intention of obtaining a protective order before the depositions began: less than 15 minutes after filing its Motion, BCBSM informed Tiara Yachts that Malmgren and Hopper would not be produced, before the Court even had an opportunity to address BCBSM's Motion. *See* August 24, 2026 Correspondence from Zausmer, **Exhibit A**. The purpose of the Motion was to obstruct and delay the depositions of witnesses with relevant information about BCBSM's claims processing.

D. BCBSM HAS ENGAGED IN SIMILAR GAMESMANSHIP BEFORE.

This is not the first time BCBSM obstructed discovery in this case. In September 2025, BCBSM pulled a similar stunt when Tiara Yachts sought to depose BCBSM representatives Kimberly Jones-Schneider and Jeffrey Baker. *See* ECF No. 89, PageID.1612. Tiara Yachts served deposition notices for Jones-Schneider and Baker on September 8, 2025, setting the depositions for September 25 and 26, 2025. Shortly before those depositions, BCBSM filed a similar "Emergency Motion for Protective Order" to block Tiara Yachts from taking those depositions. *Id.* In that motion, BCBSM argued that it was an "emergency" because the depositions were "premature" and should not be allowed until written discovery (which BCBSM was also obstructing) was completed. *Id.* Like here, BCBSM told Tiara Yachts that it would not produce Jones-Schneider and Baker for deposition while its "emergency" motion was pending.

The Court ruled in Tiara Yachts' favor and compelled the depositions, but BCBSM successfully delayed the depositions from September to late November. *See* ECF No. 109, PageID.1841. The Court chose not to sanction BCBSM. Having worked so well the first time, BCBSM tried this move again.

E. THE COURT DISMISSES BCBSM'S LATEST "EMERGENCY" MOTION.

Here, Judge Jonker reviewed BCBSM's Emergency Motion the day it was submitted, recognized that it did not present any actual emergency, and chose not to address the Motion on an expedited basis. *See* ECF No. 199, PageID.3324. Judge Jonker dismissed the Motion on September 1, 2026. *Id.* However, Judge Jonker dismissed the Motion as moot, under the reasonable expectation that the depositions proceeded in the absence of a protective order excusing BCBSM from complying with the noticed depositions.[2] *Id.* That is not the case. BCBSM refused to make the witnesses available for deposition. *See* **Ex. A**. In fact, BCBSM never intended to wait for the Court to address its Motion. BCBSM told Tiara Yachts that it would not produce the witnesses for deposition at 9:52 a.m. on August 24 after filing its Motion at 9:40. *Id.* BCBSM had already decided it would not make the witnesses available for the depositions before the Court even had a chance to review or decide its "emergency" Motion. *Id.*

F. BCBSM STILL REFUSES TO PRODUCE THE WITNESSES FOR DEPOSITION.

Even now that its Motion has been dismissed without a protective order, BCBSM refuses to produce these witnesses. The parties met and conferred at 10:30 am on September 4, 2026, and

[2] Judge Jonker stated that "[p]resumably the depositions proceeded, mooting the motion. If anything remains to be decided—for example, if the parties postponed the depositions to await judicial consideration—an affected party should file a new motion." ECF No. 199.

BCBSM's counsel stated that BCBSM will not willingly produce Malmgren and Hopper for a deposition.

BCBSM's position is incorrect and irrelevant. BCBSM argues (1) Malmgren and Hopper, as part of their roles with BCBSM, were on the internal workgroup that investigated the impacts of the claims processing issues presented by the Flip-Logic system, so their depositions will be limited to issues related to Flip-Logic; (2) Tiara Yachts' damages from Flip-Logic are approximately $5,000 according to the information provided by BCBSM; and (3) the parties have discussed a potential partial settlement of the Flip-Logic and SSP categories of the case. *See* ECF No. 194.

First and foremost, BCBSM's assumption that the depositions of Malmgren and Hopper are limited to issues surrounding Flip-Logic is incorrect. As Tiara Yachts' counsel explained to BCBSM: "The witnesses are expected to have relevant information about BCBSM's tendency to overpay claims using the plan assets of its customers. Flip logic is an example of that happening, but not the only example, so there's much to explore with the witnesses." *See* August 19, 2026 Correspondence, **Exhibit B**. In fact, Tiara Yachts would need to depose Malmgren and Hopper on the remaining claims processing issues <u>*even if the Flip-Logic portion of the case were settled*</u>, as they are expected to have information relevant to the broad payment integrity issues that plague BCBSM's claims processing system.

Second, BCBSM has not settled the Flip-Logic portion of the case (or any of Tiara Yachts' claims). The information BCBSM has produced in discovery so far indicates that Tiara Yachts has suffered approximately $5,000 in damages from BCBSM's use of Flip-Logic to improperly process non-participating claims at charge. However, this information comes from BCBSM and was under BCBSM's control. BCBSM refuses to warrant that the information it has produced in discovery is complete and accurate. Unlike BCBSM, Tiara Yachts refuses to litigate specific settlement terms through its court filings. Suffice it to say the last offer made as the parties work towards a potential partial settlement was made by Tiara Yachts to BCBSM on Friday, August 21. BCBSM has not responded to that offer.

III. LAW AND ARGUMENT

A. GOVERNING LEGAL STANDARDS.

Under the Federal Rules, "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[.]" Fed. R. Civ. P. 26(b)(1). A matter is "relevant" for purposes of Rule 26(b)(1) if it "is reasonably calculated to lead to the discovery of admissible evidence." *Martinez v. McGraw*, 581 F. App'x 512, 517 (6th Cir. 2014). "The scope of discovery . . . is traditionally quite broad," *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998), designed to ensure "the gravamen of the dispute [is] brought frankly into the open for the inspection of the court," *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512-13 (2002). The modern discovery system makes trial "less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *U.S. v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958).

B. BCBSM SHOULD BE COMPELLED TO PRODUCE ROBERT HOPPER AND DIANNE MALMGREN FOR DEPOSITION.

BCBSM's obstruction of the discovery process should end. Even after its request for a protective order was not granted, BCBSM refuses to produce Malmgren and Hopper for their depositions. BCBSM admits that both Hopper and Malmgren were heavily involved in BCBSM's internal workgroup that investigated the impacts of the Flip-Logic system, for which Tiara Yachts' claims remain pending. And that means both have knowledge related to the broader payment integrity issues that have caused Tiara Yachts to suffer millions of dollars in damages. These depositions are necessary regardless of whether BCBSM settles the Flip-Logic or SSP claims. BCBSM should be compelled to produce these witnesses for deposition within fourteen (14) days.

C. BCBSM Should Be Sanctioned for its Gamesmanship and Refusal to Appear for Properly Noticed Depositions.

Federal Rule of Civil Procedure 37(a)(5)(A) requires the court to award reasonable expenses, including attorneys' fees, when a motion to compel is granted. Federal Rule of Civil Procedure 37(d) also provides for sanctions on a party for failing to appear for a deposition after being served with proper notice. BCBSM's conduct here clearly warrants a sanction. BCBSM filed its Motion on Monday, August 24, 2026, the day before depositions were to take place. BCBSM's intent in filing the Motion was bad faith delay and to avoid producing witnesses able to provide relevant information. BCBSM knew it was unlikely the Court would address the Motion before the depositions were scheduled to begin the next day, which was why it waited until the eve of the depositions to seek relief. BCBSM did not care that the Court would not have an opportunity to address its Motion prior to the depositions—it took the decision out of the Court's hands by telling Tiara Yachts the witnesses would not appear before the Court ever had a chance to act.

This was just the latest iteration of BCBSM utilizing sham "emergencies" to avoid properly noticed depositions. After waiting until depositions are imminent, BCBSM has repeatedly filed a last-minute motion, refused to produce the witness, forced Tiara Yachts to file a motion to compel, and created months of delay in the interim. The Court has already determined that BCBSM's most recent Motion did not constitute an "emergency." But BCBSM has prevented the depositions from moving forward anyway. This deceitful "strategy" runs contrary to the Federal Rules of Civil Procedure and the broad scope of permissible discovery, imposes substantial costs on Tiara Yachts, and wastes judicial resources. BCBSM was not sanctioned when it pulled this stunt in the fall of 2025. Now it has done it again. Sanctions are mandatory and absolutely warranted.

IV. CONCLUSION

For the reasons set forth above, the Court should:

(1) Order BCBSM to produce Robert Hopper and Dianne Malmgren for their depositions within fourteen (14) days of the Court's order;

(2) Impose sanctions against BCBSM under Federal Rules of Civil Procedure 37(d) and 37(a)(5) for its bad faith conduct in obstructing these depositions, including an award of Tiara Yachts' attorneys' fees and costs incurred in connection with this Motion and in preparation of the depositions that were set for August 25 and 26, 2026; and

(3) Grant such other and further relief as the Court deems just and equitable.

Respectfully submitted,

VARNUM LLP
Attorneys for Tiara Yachts, Inc.

Dated: September 8, 2026

By: */s/ Aaron M. Phelps*
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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2026, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of the filing to all counsel of record.

/s/ Aaron M. Phelps
Aaron M. Phelps (P64790)

EXHIBIT A

Phillips, Isabella B.

From:	Mark J. Zausmer <MZausmer@zausmer.com>
Sent:	Monday, August 24, 2026 9:52 AM
To:	Rynders, Perrin
Cc:	Lewis, Daniel; Hoschander, Jeffrey; Jason M. Schneider
Subject:	Tiara Yachts/Motion for Protective Order

Perrin, please be advised that the depositions of Mr. Hopper and Ms. Malmgren will not proceed until our Motion for Protective Order is heard. The deposition of Mr. Ozdarski will proceed as scheduled. To be clear, the proposed settlement was accepted by Blue Cross based on expedience and not on the merits. Thank you.

Mark J. Zausmer
Managing Shareholder
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EXHIBIT B

Phillips, Isabella B.

From: Rynders, Perrin
Sent: Wednesday, August 19, 2026 10:55 PM
To: Mark J. Zausmer; Phelps, Aaron M.
Subject: RE: Tiara (Settlement Communication - Subject to FRE 408)

I was clear in my e-mail this morning that the upcoming depositions are not limited to flip logic, even if that claim were settled (which at this point there has been no indication by BCBSM that is interested in settling). The witnesses are expected to have relevant information about BCBSM's tendency to overpay claims using the plan assets of its customers. Flip logic is an example of that happening, but not the only example, so there's much to explore with the witnesses next week. Of course, I don't need to share my examination outlines with you.

From: Mark J. Zausmer <MZausmer@zausmer.com>
Sent: Wednesday, August 19, 2026 8:54 PM
To: Phelps, Aaron M. <amphelps@varnumlaw.com>; Rynders, Perrin <prynders@varnumlaw.com>
Subject: Tiara (Settlement Communication - Subject to FRE 408)

Aaron, I was surprised to get your email and it is mistaken on the settlement issue. I did not initiate the discussion regarding settlement. This was an issue that was raised by the judge, not me. While you were not there, Perrin clearly stated on the record that the SSP and Flip Logic claims were limited in totality to $21,000. At the judge's urging Perrin and I agreed to recommend to our respective clients a settlement of these aspects of the case for $21,000. The upcoming depositions of at least 2 of the 3 witnesses (Diane Malmgren and Robert Hopper) appear to be limited Flip Logic issues. Therefore, until we have a hearing on an anticipated motion for protective order and/or a discussion with the judge on the settlement issue, we do not believe those two depositions can take place. It is our plan to have a call with the magistrate as soon as possible to address these issues. I believe the judge was clear that he expected that the SSP and Flip Logic portions of the case would be settled. The recommendation I made on the record to Blue Cross has been accepted. I am surprised and disappointed that the recommendation by Perrin (assuming he made this recommendation) was not accepted. I believe this will disappoint the magistrate and affect his view of discovery going forward.

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I