

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD
OF MICHIGAN,

Defendant.

Case No. 1:22-cv-603
Hon. Robert J. Jonker
Mag. Ray Kent

**QUALIFIED PROTECTIVE ORDER
CONCERNING CONFIDENTIALITY**

In the interests of (i) promoting an efficient and prompt resolution of the above-captioned action (the “Action”); (ii) facilitating discovery by the parties litigating the Action; and (iii) protecting the parties’ and non-parties’ confidential information from improper disclosure or use, Tiara Yachts, Inc., including its employees, agents, and representatives (“Plaintiff”), and Blue Cross Blue Shield of Michigan, including its employees, agents, and representatives (“Defendant”) (collectively, the “Parties,” and each a “Party”), through their undersigned attorneys, stipulate and agree that the following Protective Order shall apply in this Action. Upon good cause shown, pursuant to Federal Rule of Civil Procedure 26(c)(1)(G), the Court ORDERS:

A. APPLICABILITY

1. This Protective Order is applicable to Plaintiff and Defendant, any additional parties joined in this Action, and any non-parties required to respond to discovery or otherwise participate in this Action. The Protective Order’s purposes are facilitating discovery and protecting the confidentiality and other interests of the

Parties and non-parties throughout the course of this Action, including, but not limited to, trial.

2. This Protective Order authorizes the disclosure of information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), including all applicable regulations and guidance issued by the Secretary of the United States Department of Health and Human Services (collectively, the “HIPAA Rules”), including specifically 42 C.F.R. Part 2, 45 C.F.R. §§ 164.512(e)(1)(ii)(B) and 164.512(e)(1)(v), as well as all applicable state laws and regulations regarding the privacy and security of personal information (collectively with the HIPAA Rules, the “Privacy and Security Rules”). This Protective Order constitutes a Qualified Protective Order, as that term is defined in the Privacy and Security Rules. The Parties are expressly prohibited from using or disclosing information protected by the Privacy and Security Rules obtained pursuant to this Protective Order for any purpose other than this Action.

B. SCOPE OF USE

1. **Use of Confidential Information.** Any material, document,¹ data, testimony, interrogatory answer, response to a request to admit, exhibit, and other information (“Information”) designated as “Confidential” (“Confidential Information”), that is produced or exchanged during this Action shall be used solely for the purpose of prosecuting or defending this Action, including mediation, trial preparation, trial,

¹ “Document” means documents or electronically stored information as defined in Federal Rule of Civil Procedure 34(a).

and appeal, and for no other purpose whatsoever. Confidential Information produced or exchanged in this Action shall not be disclosed² to any person or entity except in accordance with the terms of this Protective Order and as provided in Paragraph 4. With the exception of “Protected Health Information,” as defined herein at Paragraph C.2, however, the protections conferred by this Protective Order do not apply to any information that is in the public domain with or through the consent of the Party or non-party making the confidentiality designation (the “Protected Person”) at the time of production or disclosure or becomes part of the public domain after its production or disclosure as a result of publication with or through the consent of the Protected Person and not involving a violation of this Protective Order.

2. **Disclosure or Use Beyond the Terms of this Protective Order.** Nothing herein shall prevent disclosure beyond the terms of this Protective Order if the Protected Person consents in writing to such disclosure of its Confidential Information. If any Party obtains written consent from a Protected Person to the disclosure and/or use of material designated as “Confidential” on terms broader than those set forth in this Protective Order, the terms of such written consent govern the permitted disclosure and/or use of such material. If a Protected Person fails, objects, or refuses to provide written consent for the disclosure of its Confidential Information beyond that permitted by this Protective Order, the Party or other entity proposing the

² “Disclosed” means shown, divulged, revealed, produced, provided, described, transmitted, served, or otherwise communicated, in whole or in part.

disclosure may not make the proposed disclosure absent receipt of an order from this Court allowing the disclosure.

To the extent that such disclosure is sought as the result of a subpoena or a court order issued in other litigation that compels disclosure of any Confidential Information, the Receiving Party must (1) promptly notify the Protected Person, in writing, unless prohibited by law from doing so, of the subpoena or court order, including a copy of the subpoena or court order in that notification; and (2) promptly notify the Party or entity proposing or seeking the disclosure, in writing, that some or all of the material sought is subject to this Order. If a Protected Person fails, objects, or refuses to provide written consent for the disclosure of its Confidential Information, the Party or other entity proposing the disclosure must, consistent with the applicable local rules and practice guidelines of this Court or the court issuing the subpoena, seek an order to allow the proposed disclosure, and the Confidential Information shall not be disclosed pending a resolution . Notwithstanding the aforementioned, the purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the Protected Person an opportunity to try to protect its Confidential Information in the court from which the subpoena or order issued. The Protected Person shall bear the burden and the expense of seeking protection of its Confidential Information and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this Action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the receiving party has

in its possession, custody, or control information designated as Confidential Information.

C. DESIGNATION OF MATERIAL AS “CONFIDENTIAL”

1. Designation of Information. Any Confidential Information produced, served, or otherwise disclosed, whether voluntarily or under compulsory process, by any Protected Person to any Receiving Party during the Proceedings shall be treated in a manner that is consistent with the definitions and procedures set forth in this Protective Order. Documents previously produced shall be retroactively designated by notice in writing by Bates number or such other means that will allow for the identification of such documents, as provided in Paragraph C.3(c) to C.3(e). The failure by a Protected Person to designate specific documents or materials as containing Confidential Information shall not be deemed a waiver in whole or in part of a claim of confidentiality as to such documents or materials. Upon notice to each Receiving Party of such failure to designate, each Receiving Party shall treat the disclosed information as Confidential Information.

“Confidential” Designation. A Protected Person may designate as “Confidential” any Information that it reasonably and in good faith believes contains any (1) trade secret or other confidential research, development, or commercial information, as such terms are used in Federal Rule of Civil Procedure 26(c)(1)(G), or (2) personal information protected by HIPAA or other state or federal law, provided that the Protected Person or third party has made sufficient efforts to maintain confidentiality that are reasonable under the circumstances.

2. **Confidential Health Information and Sensitive Personal Information.** The Parties desire to ensure the privacy of patient/insured/member medical records, patient/insured/member claims information, and other Information that may contain sensitive personal or sensitive personal health information (“Confidential Health Information”). Confidential Health Information encompasses patient health information protected by any state or federal law, including, but not limited to, “Protected Health Information,” as defined below, as well as any other potentially sensitive personal information of a consumer. Confidential Health Information must be designated as “Confidential” and any such information concerning a third party shall be deemed “Confidential” and, as such, subject to the terms of this Protective Order.

(a) **Protected Health Information.** “Protected Health Information” has the same scope and definition as set forth in 45 C.F.R. § 160.103. Protected Health Information includes, but is not limited to, individually identifiable health information, including demographic information, relating to: the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, which identifies or reasonably could be expected to identify the individual. Information that has been de-identified consistent with applicable HIPAA regulations does not constitute Protected Health Information. Protected Health Information may also include, but is not limited to: (a) medical bills, claims forms, charges sheets, medical records, medical charts, test results,

notes, dictation, invoices, itemized billing statements, remittance advice forms, explanation of benefits, checks, notices, and requests, and may include notes, summaries, compilations, extracts, abstracts, or oral communications that are based on or derived from Protected Health Information, regardless of form or format; and (b) information that contains the following identifiers of a patient/insured/member or of a relative, employer, or household member of a patient/insured/member:

- (i) names;
- (ii) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;
- (iii) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;
- (iv) telephone numbers;
- (v) fax numbers;
- (vi) electronic mail addresses;
- (vii) social security numbers;
- (viii) medical record numbers;
- (ix) health plan beneficiary numbers;
- (x) account numbers;
- (xi) certificate/license numbers;
- (xii) vehicle identifiers and serial numbers, including license plate numbers;

- (xiii) device identifiers and serial numbers;
- (xiv) web universal resource locators (“URLs”);
- (xv) internet protocol (“IP”) address numbers;
- (xvi) biometric identifiers, including finger and voice prints;
- (xvii) full face photographic images and any comparable images;
- (xviii) any other unique identifying number, characteristic, or code (excluding such numbers, characteristics, or codes permitted under 45 CFR § 164.514(c)); and
- (xix) any other information that the Protected Person knows or reasonably should know could be used alone or in combination with other information to identify an individual who is subject of the information.

Protected Health Information may also include, but is not limited to, the individual electronic records or files contained in encrypted mass storage media used to produce Protected Health Information. Protected Health Information includes individually-identifiable health information that is “[t]ransmitted or maintained in any other form or medium” from electronic media. 45 CFR § 160.103. (Examples of such electronic or other media may include, by way of description and not limitation, paper copies or printouts, facsimiles, unencrypted files, or other mass storage devices upon which such Protected Health Information may be transmitted or maintained).

- (b) **Safeguards for Confidential Health Information.** The Parties also seek to ensure that any person who receives and stores Confidential Health Information in connection with these Proceedings will develop, implement, maintain, and use appropriate administrative, technical, and physical

safeguards to preserve the privacy, integrity, confidentiality, and availability of any Confidential Health Information, and to prevent unpermitted use or disclosure of any Confidential Health Information they may receive from any person in connection with these Proceedings. At a minimum, all Receiving Parties and persons or entities who might receive Confidential Health Information (including all signatories to Appendix A of this Order) agree that they will: (1) comply with the Privacy and Security Rules; (2) store Confidential Health Information in electronic format only on device(s) (*e.g.*, laptop, tablet, smartphone, thumb drive, portable hard drive) that are password protected and encrypted; (3) store Confidential Health Information in hard copy format only in a secure location with access limited to persons entitled to access such information under this Order; (4) transmit information that they know or reasonably should know contains Confidential Health Information in electronic format only if such data is encrypted prior to transmittal and the encryption key provided in separate correspondence; and (5) transmit or ship Confidential Health Information in hard copy format only using secure packaging tape via Federal Express or UPS and retaining a tracking number for the materials. Notwithstanding the foregoing, counsel for the Parties—including counsel from separate law firms who represent the same Party—may electronically transmit Confidential Health Information without encrypting such data provided that such transmittal communication only includes internal recipients in counsel's firm. All Parties and persons or entities who might receive

Confidential Health Information must also establish contractual controls that require any Service Providers, experts, or third parties that might receive Confidential Health Information to comply with all of the requirements of this Paragraph and certify that they will do so, and undertake due diligence to verify that the privacy and security protections of any such Service Providers, experts, or third parties comply with the requirements of this Paragraph, including the Privacy and Security Rules. Confidential Health Information will be securely destroyed,³ deleted, or returned pursuant to the provisions of Paragraph E.1 below.

- (c) **Security Breach Regarding Confidential Health Information or Sensitive Personal Information.** If a Receiving Party discovers a breach of security relating to Confidential Health Information (or has a reasonably supported suspicion that a breach has occurred), such Party, person, or entity shall: (1) provide written notice to the Protected Person of the breach within 72 hours of discovery of the breach; (2) investigate and take appropriate actions to attempt to remediate the effects of the breach, and to ensure the breach will not recur; (3) provide sufficient information about the breach that the Protected Person can ascertain what data is affected by the breach and the scope of the breach; and (4) cooperate with the Protected Person and/or law enforcement in investigating any such security incident.

³ “Secure destruction” means securely overwriting or wiping data using a secure file deletion utility to ensure that the information cannot be recovered. For those devices that cannot be overwritten (*e.g.*, defective hard drives, CDs/DVDs), the device must be destroyed prior to disposal.

- (d) **Redaction of Confidential Health Information.** Except as between the Parties, a party disclosing Confidential Health Information may, but is not required to, redact any Confidential Health Information, or take suitable precautions in order to protect the privacy of its employees, participants, members, subscribers, or patients, but only to the extent such redaction or other precaution does not result in prejudice to another party in this Action. A Party disclosing Confidential Health Information to another Party may not redact any Confidential Health Information; provided, however, that nothing in this Qualified Protective Order shall impact any legal requirements for redacting personal identifying information in court filings.

3. Designation Process. The following rules govern the process for designating any document, transcript, or other material as “Confidential”:

- (a) A Protected Person that designates as “Confidential” any document or other material, whether in hard copy or electronic form, must stamp or label each confidential page with the applicable designation of “CONFIDENTIAL.” Notwithstanding the foregoing, with respect to any Confidential Information that is produced as native ESI and that is not susceptible to the imprinting of a stamp signifying its confidential nature, the Protected Person must designate it by way of: (1) written communication, including a cover letter or email; and (2) slip sheet and by affixing a label on the production media and/or altering the file name of the native ESI to indicate its confidentiality (e.g., “Conf.”), at the time that Confidential Material is

produced. Whenever any ESI is reduced to a hard-copy document, such copy shall be marked with the legend as provided in this Paragraph.

- (b) Except as provided in Paragraphs C.3(c) through C.3(e) of this Protective Order, a “Confidential” designation must be made to a document, transcript, or other material prior to its disclosure to any Receiving Party.
- (c) A Protected Person shall have the right to designate as “Confidential” any document, transcript, or other material containing its Confidential Information if another Protected Person discloses such material without the appropriate confidentiality designation. To make such a designation, the Protected Person must notify the Parties in writing as soon as practicable after learning that the disclosed material contains its Confidential Information. After receiving such notice, all Receiving Parties must thereafter treat the newly-designated material as Confidential, and the Receiving Parties must cooperate to restore the confidentiality of the newly-designated material. No prior disclosure or use of newly designated material shall be considered a violation of this Protective Order.
- (d) The inadvertent failure by a Protected Person to designate as “Confidential” any document, transcript, or other material containing Confidential Information prior to its disclosure shall not be deemed a waiver in whole or in part of a claim that such material constitutes Confidential Information. A Protected Person may retroactively designate as “Confidential” any document, transcript, or other material that it inadvertently disclosed by notifying the Parties in writing as soon as practicable, but in no event more

than five business days after learning of the inadvertent disclosure. After receiving such notice, the Receiving Parties must thereafter treat the newly designated material as Confidential as applicable, and the Receiving Parties must cooperate to apply the designation of the inadvertently disclosed material. No prior use or disclosure of newly designated material shall be considered a violation of this Protective Order.

- (e) A deposition transcript or portion thereof may be designated as “Confidential” by making that designation on the record during the deposition or by denominating by page and line those portions of the deposition which are to be considered “Confidential” within 14 days of receiving the final transcript and exhibits, and so informing all Parties and Protected Persons in writing of the designation. Until the 14-day period has passed, the deposition transcript in its entirety must be treated as if it were designated as “Confidential” under the terms of this Protective Order. If testimony is orally designated as “Confidential” during the deposition or prior to the 14-day period passing, the court reporter must transcribe the pages so designated in a separate volume marked “Confidential” or as applicable. The Parties shall negotiate in good faith to alter the time frames set forth in this paragraph in situations where a more expedited filing of a designated portion of the transcript is required.
- (f) Whenever a Party seeks discovery by subpoena from a non-party to this Action, a copy of this Protective Order shall accompany the subpoena to

allow the non-party to designate material as “Confidential” and obtain the protections provided in this Protective Order.

4. **Objections to “Confidential” Designations.** If any Party reasonably and in good faith believes that any particular document or other material is not properly subject to the confidentiality designation assigned to it, or should not be subject to this Protective Order, that Party must notify the designating Protected Person in writing and provide a description of the disputed material by Bates number or deposition witness/page/line, and a concise statement of the basis for the challenge, and serve copies of such notice to all other Parties. Thereafter, the Protected Person must advise whether it will withdraw some or all of the challenged documents. Counsel shall confer in good faith in an effort to resolve any dispute concerning the designation.

If an objection to a particular document or other material’s confidentiality designation cannot be resolved by agreement, either Party may, but is not required to, make the Court aware of the dispute consistent with the Court’s practice guidelines, and request a telephonic or other remote conference as to whether the designation is appropriate. If the dispute is raised with the Court, the protections afforded by the Protective Order regarding the confidentiality designation shall continue as originally designated until this Court issues an order or the dispute is otherwise resolved. If the Court orders removal of a confidentiality designation, the document from which the designation is removed shall no longer be subject to the protections established in this Qualified Protective Order for Confidential Information. Any Party or third party challenging a confidentiality designation

agrees not to challenge whether the designating party had a subjective “good faith” belief that the material qualified for the designation but may challenge only whether the material objectively qualifies for that designation. The burden of establishing the appropriate level of confidentiality shall be on the Party making the designation.

D. DISCLOSURE AND USE OF MATERIAL DESIGNATED AS “CONFIDENTIAL,”

1. Disclosure and Use of Confidential Information Generally. Except as agreed by the designating Protected Person or its counsel, or as otherwise provided in this Protective Order, any Confidential Information:

- (a) must be maintained in confidence;
- (b) may be disclosed only to persons entitled to access thereto under the terms of this Protective Order;
- (c) may be used by such persons to whom it is disclosed only for the purposes of prosecuting or defending this Action, and for no other purpose;
- (d) may be photocopied or otherwise reproduced only as reasonably necessary for this Action; and
- (e) will be securely destroyed or returned at the conclusion of this Action pursuant to the provisions of Paragraph E.1 of this Protective Order, except as required by law.

2. Required Certification Prior to Disclosure of Confidential Information. Before any Confidential Information may be disclosed to any person authorized to use such material, the person receiving the material must first read this Protective Order or must have otherwise been instructed on his or her obligations under the Protective Order by this Court or counsel for a Party, and shall have executed the Agreement

Concerning Confidentiality, attached as **Appendix A** (for Service Providers to Parties or their counsel, only one copy of the Agreement Concerning Confidentiality need be executed per entity, provided that such Service Provider has reasonable procedures in place for the handling of confidential information). Counsel for the Protected Person making the disclosure must retain the original of such executed agreement for a period of at least one (1) year following the final resolution of this Action.

3. Authorized Users of “Confidential” Material.

(a) Except as otherwise authorized by this Protective Order, any document, transcript, or other material designated as “Confidential” by a Protected Person pursuant to this Protective Order may not be disclosed to any person other than the persons set forth below, and may be disclosed to and used by the persons set forth below only in this Action and in accordance with any applicable requirements of this Protective Order:

- (i) this Court and all persons assisting this Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;
- (ii) outside counsel acting for Plaintiff or Defendant in this Action, that counsel’s employees, and independent contractors assisting such counsel in the prosecution or defense of this Action;
- (iii) a Party’s outside service-providers and consultants who engage in document and ESI processing, hosting, review, and production, which includes any e-Discovery consultants and trial consultants (“Service Providers”);
- (iv) court reporters and videographers in connection with the course of a deposition in this Action;
- (v) during their depositions or in preparation for their depositions, witnesses and their attorneys to whom disclosure is reasonably necessary. Such persons may review, but may not retain,

Confidential Information, except witnesses and their attorneys may receive copies of transcripts of their testimony.

- (vi) authors, addressees, and recipients of designated material solely to the extent that they have previously had lawful access to the material disclosed or to be disclosed;
- (vii) testifying or consulting experts retained by any Party to assist outside counsel in the prosecution or defense of this Action, including employees of the firm with which the expert or consultant is associated to the extent necessary to assist the expert's work in this Action;
- (viii) persons not otherwise authorized to receive designated material solely to the extent that permission to disclose such material is received in writing from any Protected Persons who designated such materials (as statement on the record of a deposition shall be deemed to be "in writing");
- (ix) in-house counsel for any Party engaged in the litigation of this Action and the employees and personnel who work with such attorneys to whom it is necessary that the material be shown for purposes of this Action.
- (x) Employees or former employees of a corporate Party engaged in assisting that Party's attorneys in the conduct of this Action, to the extent reasonably necessary to enable the attorneys for that Party or client to render professional services in this Action. Confidential Materials will not be disclosed to a former employee until that employee has signed and delivered to counsel for the Party that is the former employer a statement in the form annexed hereto as Attachment A.

- (b) Any person in possession of material designated as "Confidential" by other Protected Persons must treat that material in accordance with the terms of the Protective Order for the entire period of time that such Person remains in possession of or maintains such material.

4. Disclosure of Material Designated as "Confidential" in Pretrial Proceedings in this Action. This order does not authorize the filing of any documents under seal.

Documents may be sealed only if authorized by statute or by order of the Court for good cause shown. A party seeking to have filed under seal any paper or other matter in this case must file and serve a motion seeking requesting such relief. *See* W.D. Mich. LCivR 10.6. The parties agree that the treatment of Confidential Information at trial will be governed by a separate order entered before the trial of this matter. That order shall govern only the use and introduction of Confidential Information at trial, and all Confidential Information, including that used during trial, shall continue to receive the protections established under this Protective Order after entry of the trial-specific confidentiality order for all purposes other than its use and introduction at trial.

5. **Unauthorized Disclosure of Confidential Information.** If a Receiving Party learns that it has disclosed Confidential Information to any person or entity or in any circumstance not authorized under this Protective Order, that Party must immediately (a) notify the Protected Person in writing of the unauthorized disclosure(s), (b) use its best efforts to retrieve all copies of the designated material, (c) inform the persons or entities to whom unauthorized disclosures were made of all the terms of this Protective Order, (d) request that such persons or entities execute the Agreement To Be Bound By Protective Order that is attached as Attachment A; and (e) cooperate with reasonable efforts by the Protected Person to require any person or entity in possession of the Protected Person's Confidential Information to comply with paragraph 5(a)-(d). An unauthorized disclosure of any designated material does not change the confidentiality designation originally

assigned to it by the Protected Person, and does not waive the Protected Person's right to maintain that confidentiality designation.

6. No Waiver. Production pursuant to this Protective Order shall not be deemed a waiver of:

- (a) any Party's or third party's right to object to any discovery requests on any ground;
- (b) any Party's right to seek an order compelling discovery with respect to any discovery request;
- (c) any Party's right to object to the admission of any evidence on any ground in these Proceedings;
- (d) any Party's or third party's use and review of its own documents and its own Confidential Information in its sole and complete discretion; or
- (e) the status of any material as a trade secret.

7. Responsibility of Counsel. Counsel for a Receiving Party shall be responsible for restricting disclosure in accordance with the provisions of this Protective Order and for securing execution of and retaining any executed version of the statement attached hereto as Attachment A when required under the provisions of this Protective Order, and to take reasonable necessary steps to ensure that Confidential Information is maintained in accordance with the provisions of this Protective Order. The Receiving Party shall also use reasonable efforts to keep a list or otherwise maintain records sufficient to identify (a) all persons or, where maintaining a record of individuals is impractical, all entities to whom Confidential Information has been disclosed, and (b) all Confidential Information disclosed to

such persons or entities. Each such executed Attachment A and the corresponding list of Confidential Information shall be submitted to counsel for the Producing Party upon Order of the Court requiring production. However, for consulting experts who were not designated as testifying experts, the Receiving Party may redact the name, address, and signature of the consultant before submitting the executed Attachment A and document list for that person. For the avoidance of doubt, the Receiving Party need not maintain records of persons to whom Confidential Information has been disclosed to the extent such individuals are described in D.3(a)(i), (ii), (iv), or (x).

8. Protected Material of Non-Parties Sought to Be Produced. If a Party is required by a valid discovery request to produce a non-party's confidential information in the Party's possession, and the Party is subject to an agreement (not including a court order, such as a protective order in another matter) with the non-party not to produce the non-party's confidential information, then the Party shall:

- (a) promptly notify in writing the requesting Party and the non-party that some or all of the information requested is subject to a confidentiality agreement with a non-party;
- (b) promptly provide the non-party with a copy of this Protective Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- (c) make the information requested available for inspection by the non-party.

If the non-party fails to object within 14 days of receiving the notice and accompanying information, the Party may produce the non-party's confidential

information responsive to the discovery request. If the non-party timely objects, the Party shall not produce any information in its possession, custody or control that is subject to the confidentiality agreement with the non-party before resolution of that objection. The Party and objecting non-party shall meet and confer in a good faith attempt to resolve that objection, and if resolution is not achieved, the objecting non-party shall contact the Court for resolution of the dispute within 14 days of making its objection, and request leave to file a motion for protective order. If the objecting non-party fails to do so, its objection shall be deemed resolved. Absent a court order to the contrary, the objecting non-party shall bear the burden and expense of seeking protection in this Court of its confidential information.

E. PROCEDURES UPON TERMINATION OF THIS ACTION

1. The provisions of this Protective Order shall continue in effect with respect to any Confidential Material until expressly released by the Party or third party designating the Confidential Material, and if applicable, such effectiveness shall survive the final determination of these Proceedings. Within 90 days after receiving notice of the entry of any order, judgment, or decree marking the termination of this Action, all persons having received Confidential Information must either make a good faith effort to return such material and all copies thereof to the Protected Person that produced it, or destroy all such designated material and certify that fact in writing to that person. Outside counsel for Plaintiff and Defendant will be entitled to retain court papers, deposition and trial transcripts and exhibits, and work product, provided that counsel (and their respective employees) do not disclose the portions of court papers, deposition or trial transcripts, exhibits, and work product

containing Confidential Information to any person except pursuant to the Protective Order or agreement with Protected Person. All Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this Paragraph.

2. For purposes of this Protective Order, the “termination of this Action” shall be deemed to be the latter of (i) full settlement of all claims; (ii) final judgment herein after the completion and exhaustion of all appeals, re-hearings, remands, trials and reviews, if any, of this Action (excluding any time period under which the court has supervision or oversight over any relief issued through a consent decree or any non-preliminary injunction issued by the court); or (iii) the expiration of all time limits under applicable state or federal law for the filing of or application for all appeals, rehearings, remands, trials or reviews of this Action, including the time limits for the filing of any motions or applications for extension of time pursuant to applicable law. Any time period under which the court has supervision or oversight over any relief issued through a consent decree or any non-preliminary injunction issued by the court will not be considered after the conclusion of this Action.

F. BINDING NATURE OF PROTECTIVE ORDER

1. This Protective Order is binding upon the Parties, their attorneys, and upon the Parties’ and their attorneys’ successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

2. Any person who violates this Order may be subject to sanctions, including injunctive relief, contempt orders, monetary damages, or other penalties to be determined by the Court.

SO STIPULATED:

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SO ORDERED:

Dated:

Judge Robert J. Jonker

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

TIARA YACHTS, INC.,

Plaintiff,

v.

Case No. 1:22-cv-603
Hon. Robert J. Jonker
Mag. Ray Kent

BLUE CROSS BLUE SHIELD
OF MICHIGAN,

Defendant.

AGREEMENT CONCERNING CONFIDENTIALITY

I have received a copy of and agree to be bound by the terms of the Protective Order Concerning Confidentiality (“Protective Order”) entered in the above-captioned action (the “Action”). I understand that pursuant to the Protective Order, information disclosed in this Action through discovery shall be held confidential pursuant to the terms of the Protective Order. I hereby agree to be bound by the terms of the Protective Order with respect to the treatment of information or documents designated as “Confidential.”

I will access and review material that may be provided to me during this Action solely for the purpose of my role in assisting with prosecuting or defending this Action, and for no other purpose whatsoever. I further agree that I will not disclose any material to any person except as allowed by the terms of the Protective Order.

I understand that failure to comply with the terms of the Protective Order may be punishable by contempt of court and may result in civil liability to any party or person damaged thereby or criminal prosecution. I consent to the jurisdiction of the United States District Court for the Western District of Michigan (without any time limit) for the purpose of enforcing the

Protective Order and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

Dated this ___ day of _____, 20__.

By: _____
Print

Signature