

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN**

|                           |   |                           |
|---------------------------|---|---------------------------|
| TIARA YACHTS, INC.,       | ) |                           |
|                           | ) |                           |
| Plaintiff,                | ) | Case No. 1:22-cv-603      |
|                           | ) |                           |
| v.                        | ) |                           |
|                           | ) | Judge Robert J. Jonker    |
| BLUE CROSS BLUE SHIELD OF | ) |                           |
| MICHIGAN,                 | ) | Magistrate Judge Ray Kent |
|                           | ) |                           |
| Defendant.                | ) |                           |
|                           | ) |                           |

**DEFENDANT’S REPLY IN SUPPORT OF ITS  
MOTION FOR ATTORNEYS’ FEES AND COSTS**

**TABLE OF CONTENTS**

I. Tiara Yachts’ Argument that Section 1132(g)(1) of ERISA Does Not Apply is Plainly Incorrect. ....1

II. An Award to Defendant is Appropriate Here. ....2

III. Tiara Yachts’ Arguments Regarding the Parties’ Jointly-Signed Release Agreement are Factually Outlandish and Legally Inaccurate.....3

IV. The Court Need Not Consider the Amount of Fees at This Stage.....4

V. Conclusion.....4

**TABLE OF AUTHORITIES**

| <b>Cases</b>  | <b>Page(s)</b> |
|---|----------------|
| <i>Astor v. IBM Corp.</i> ,<br>7 F.3d 533 (6th Cir. 1993) .....   | 2              |
| <i>Buck v. City of Highland Park, Mich.</i> ,<br>733 F. App’x 248 (6th Cir. 2018) .....                                       | 4              |
| <i>Dublin Eye Assocs., P.C. v. Mass. Mut. Life Ins. Co.</i> ,<br>2014 WL 1217664 (E.D. Ky. Mar. 24, 2014) .....               | 3              |
| <i>Moore v. Lafayette Life Ins. Co.</i> ,<br>458 F.3d 416 (6th Cir. 2006) .....   | 1              |
| <i>Paddack v. Morris</i> ,<br>783 F.2d 844 (9th Cir. 1986) .....  | 1              |
| <i>Pearson v. Voith Paper Rolls, Inc.</i> ,<br>656 F.3d 504 (7th Cir. 2011) .....   | 3              |
| <i>RAI Care Ctrs. of Mich. I, LLC v. Admin. Sys. Research Corp. Int’l</i> ,<br>2021 WL 5924341 (W.D. Mich. Mar. 8, 2021)..... | 3              |
| <i>Trs. of Detroit Carpenters Fringe Benefit Funds v. Patrie Const. Co.</i> ,<br>618 F. App’x 246 (6th Cir. 2015) .....       | 2              |

In its Response to BCBSM’s Motion for Attorneys’ Fees and Costs (ECF No. 31), Tiara Yachts propounds multiple new arguments that lack any reasonable basis in either law or fact and therefore warrant a reply. Tiara Yachts’ erroneous arguments should be disregarded.

**I. Tiara Yachts’ Argument that Section 1132(g)(1) of ERISA Does Not Apply is Plainly Incorrect.**

Tiara Yachts contends that Section 1132(g)(1) of ERISA does not apply because BCBSM argued—and the Court held—that this case is “NOT an ERISA case.” ECF No. 31, PageID.637. Tiara Yachts is flat wrong. It brought its case under ERISA—and now seeks leave to file a *new* complaint again seeking relief under ERISA. The fact that Tiara Yachts’ claim does not satisfy ERISA’s requirements does not somehow insulate Tiara Yachts from the consequences of its misuse of ERISA’s provisions. *See Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 441, 446 (6th Cir. 2006) (Section 1132(g)(1) applies when Plaintiffs attempt to “unnecessarily expand[] the scope and complexity of litigation” under ERISA, and awarding fees to Defendant); *see also Paddack v. Morris*, 783 F.2d 844, 847 (9th Cir. 1986) (one purpose for Section 1132(g)(1) is to “discourage [Plaintiffs] from asserting . . . claims with no basis in law or fact” under ERISA). Indeed, the Sixth Circuit has declared this exact theory—that a plaintiff can escape ERISA’s fee-shifting provision simply because the court dismissed its ERISA claims—to be “self-serving and incorrect.” *See Moore*, 458 F.3d at 441.

## II. An Award to Defendant is Appropriate Here.

Tiara Yachts contends that a fee award to BCBSM as the Defendant is “inappropriate.” ECF No. 31, PageID.639-641. To be sure, an award to a prevailing ERISA defendant may be inappropriate if it would “deter similar suits by *plan participants* . . . who lack the resources to risk paying the other party’s costs and attorneys’ fees” or if it would “reduc[e] the amount of benefits available to other *beneficiaries*.” *Astor v. IBM Corp.*, 7 F.3d 533, 537, 540 (6th Cir. 1993) (emphasis added); *Trs. of Detroit Carpenters Fringe Benefit Funds v. Patrie Const. Co.*, 618 F. App’x 246, 258–59 (6th Cir. 2015). Indeed, *every single case* Tiara Yachts cites involved a fee award that would have adversely affected an ERISA plan or beneficiary.<sup>1</sup>

But that is not this case. The only Plaintiff here is Tiara Yachts, a company that freely contracted with BCBSM for its services, and that brought an ERISA

---

<sup>1</sup> See ECF No. 31, PageID.639-640 (citing *Meredith v. Navistar Int’l Transp. Co.*, 935 F.2d 124, 129 (7th Cir. 1991) (noting that “[a]dherence to this policy often counsels against charging fees against ERISA beneficiaries since private actions by beneficiaries seeking in good faith to secure their rights under employee benefit plans are important mechanisms for furthering ERISA’s remedial purpose”) (emphasis added); *Gray v. New England Tel. & Tel. Co.*, 792 F.2d 251, 259 (1st Cir. 1986); *Toussaint v. JJ Weiser, Inc.*, 648 F.3d 108, 109 (2d Cir. 2011); *West v. Greyhound Corp.*, 813 F.2d 951, 952 (9th Cir. 1987); *Jones v. O’Higgins*, 736 F. Supp. 1243, 1243 (N.D.N.Y. 1990); *Huizinga v. Genzink Steel Supply & Welding Co.*, 984 F. Supp. 2d 741, 747 (W.D. Mich. 2013); *Saginaw Chippewa Indian Tribe of Mich. v. Blue Cross Blue Shield of Mich.*, 2018 WL 453762, at \*6 (E.D. Mich. Jan. 17, 2018), *rev’d in part on other grounds*, 736 F. App’x 140 (6th Cir. 2018); *Guest-Marcotte v. Metaldyne Powertrain Components, Inc.*, 2017 WL 2403569, at \*1-2 (E.D. Mich. June 2, 2017); *Hall v. Ohio Educ. Ass’n*, 984 F. Supp. 1144, 1148 (S.D. Ohio 1997); *Duncan v. Minn. Life Ins. Co.*, 2021 WL 1759634, at \*1 n.1 (S.D. Ohio May 4, 2021)).

claim to seek contract damages *for itself*—“not . . . on behalf of the Plan.” ECF No. 23, PageID.467. Just like Tiara Yachts’ complaint would not have conferred benefits to anyone other than itself, an award of fees against Tiara Yachts would not draw *any* detriment to the Plan or its participants.<sup>2</sup> Accordingly, the judicial policy disfavoring fee awards against ERISA Plaintiffs does not apply here. *See Dublin Eye Assocs., P.C. v. Mass. Mut. Life Ins. Co.*, 2014 WL 1217664, at \*5 (E.D. Ky. Mar. 24, 2014) (“Plaintiffs’ complete lack of diligence in their role as Trustees and their insistence in pursuing untimely claims are not deserving of the protection ERISA affords individual participants pursuing claims in good faith.”).

### **III. Tiara Yachts’ Arguments Regarding the Parties’ Jointly-Signed Release Agreement are Factually Outlandish and Legally Inaccurate.**

There is no merit to Tiara Yachts’ efforts to waive away the release it signed. Tiara Yachts proclaims it was “extort[ed]” to sign the release, ECF No. 31, PageID.645-646, but neither its brief nor its counsel’s declaration offers even a scintilla of support for this outlandish assertion. If anything, this baseless charge underscores BCBSM’s argument that Tiara Yachts and its counsel’s conduct reflects bad faith.

---

<sup>2</sup> Tiara Yachts’ suggestion that its Plan would be compelled to pay any fee award, ECF No. 31, PageID.646, makes no sense. Under ERISA, a Plan must be separate from its sponsor. *RAI Care Ctrs. of Mich. I, LLC v. Admin. Sys. Research Corp. Int’l*, 2021 WL 5924341, at \*1 n.1 (W.D. Mich. Mar. 8, 2021); *Pearson v. Voith Paper Rolls, Inc.*, 656 F.3d 504, 510 (7th Cir. 2011). Tiara Yachts’ Plan is not a party to this lawsuit, ECF No. 18, PageID.380-381, and any fee award entered in this lawsuit would accordingly run against Tiara Yachts, not its Plan.

Second, BCBSM had no reason to argue for dismissal based on the release before it moved to dismiss Tiara Yachts' complaint as facially defective. *See Buck v. City of Highland Park, Mich.*, 733 F. App'x 248, 251 (6th Cir. 2018) ("A motion pursuant to Federal Rule of Civil Procedure 12(b) is the typical vehicle for testing a complaint's sufficiency before the pleadings have closed."). BCBSM raised the release with Tiara Yachts' counsel so that the need to file a 12(b)(6) motion could be avoided, and timely informed the Court that it would address the release if the complaint were not dismissed due to its facial deficiencies. *See* ECF No. 13, PageID.172 ("BCBSM believes the release provides a basis to dispose of the case, to the extent the claims are not dismissed under Rule 12(b)(6).").

**IV. The Court Need Not Consider the Amount of Fees at This Stage.**

The Court can simply disregard Tiara Yachts' arguments regarding the amount of fees. ECF No. 31, PageID.648–649. Tiara Yachts can advance, and the Court can consider, any appropriate challenge to the amount of fees later.

**V. Conclusion**

BCBSM's Motion for Attorneys' Fees and Costs should be granted.

Dated: April 5, 2023

Respectfully submitted,

/s/ Tacy F. Flint

Tacy F. Flint  
Kathleen R. Carlson

Elizabeth Y. Austin  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, Illinois 60603  
Telephone: (312) 853-7000  
tflint@sidley.com  
kathleen.carlson@sidley.com  
laustin@sidley.com

Rebecca D'Arcy O'Reilly (P70645)  
Sarah L. Cylkowski (P75952)  
Samantha K. W. Van Sumeren (P82948)  
BODMAN PLC  
6th Floor at Ford Field  
1901 St. Antoine Street  
Detroit, Michigan 48226  
Telephone: (313) 259-7777  
roreilly@bodmanlaw.com  
scylkowski@bodmanlaw.com  
svansumeren@bodmanlaw.com

*Attorneys for Defendant*



**CERTIFICATE OF COMPLIANCE**

Pursuant to L. Civ. R. 7.3(b)(i), I hereby certify that this document complies with L. Civ. R. 7.3(b)(ii) because this document, generated using Microsoft Word 2010, contains 1,110 words.

/s/ Tacy F. Flint  
Tacy F. Flint