

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 RESPONSE IN OPPOSITION TO
DEFENDANT/COUNTER-PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

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I. INTRODUCTION

The Court recently denied BCBSM's request to halt discovery and directed the parties to build a factual record. *See* ECF No. 81 at PageID.1310. Yet, BCBSM has refused to produce a single document in response to Tiara Yachts' first set interrogatories and document requests. Instead, it seeks a blanket protective order based on unsupported objections of overbreadth, irrelevance, disproportionality, and a unilateral six-year cutoff.

Those arguments lack merit. Tiara Yachts' requests are clear, tethered to core issues in this ERISA fiduciary-breach and prohibited-transaction case, and are proportional. The requested materials—Tiara Yachts' claims data; BCBSM's internal policies, systems, and investigations addressing systemic claims-processing flaws; documents concerning the Wegner investigation and related litigation; SSP materials; and Tiara Yachts-specific account statements—are central to liability, defenses, and damages. BCBSM has shown no "good cause" under Rule 26(c) with particularized facts of any "clearly defined and serious injury." It has provided no particularized facts, no supporting evidence, and no basis upon which a "clearly defined and serious injury" would occur from BCBSM producing the requested documents.

Indeed, courts have already rejected identical arguments by BCBSM in a closely analogous ERISA case. *See Comau v. BCBSM*, No. 19-cv-12623, Order (E.D. Mich. Apr. 19, 2021) (ECF No.87-1, PageID.1447-1449). There, the court denied BCBSM's motion for protective order, granted plaintiff's motion to compel, and ordered production of the same categories of materials Tiara Yachts seeks here, including claims data, "non-[plaintiff] overpayments" more generally, the Wegner materials, and documents dating back at least to 2008. The same result is warranted here.

BCBSM's motion should be denied and BCBSM should be ordered to promptly produce the responsive materials.

II. BACKGROUND

A. BCBSM'S HISTORY OF CONCEALED SCHEMES AND DISCOVERY OBSTRUCTION.

BCBSM has a well-documented history of concealing wrongful conduct and resisting discovery. *Compare Hi-Lex Controls, Inc. v. BCBSM*, 751 F.3d 740, 743–49 (6th Cir. 2014) (finding BCBSM "engaged in a course of conduct designed to conceal evidence of [its] alleged wrong-doing"), with *Tiara Yachts, Inc. v. BCBSM*, 138 F.4th 457, 462 (6th Cir. 2025) ("BCBSM concealed flip logic from its customers and limited access to claims data and explanatory documents."). As BCBSM's misconduct has been unveiled—sometimes eighteen years after BCBSM implemented its scheme, see *Hi-Lex*, 751 F.3d at 740—numerous lawsuits have followed.

Although these cases involved different facts and plaintiffs, many reflect a common pattern: BCBSM repeatedly attempting to avoid lawful discovery through meritless objections and delay tactics. See e.g., *Saginaw Chippewa Indian Tribe of Michigan v. BCBSM*, 683 F. Supp. 3d 645, 647, 651-52 (E.D. Mich. 2023) (sanctioning BCBSM \$91,672 for repeated discovery obstruction and delays); *Saginaw Chippewa Indian Tribe of Michigan v. BCBSM*, 641 F. Supp. 3d 394, 399 (E.D. Mich. 2022) (compelling BCBSM to produce documents it withheld); *Hi-Lex Controls Inc. v. BCBSM*, No. 11-12557, 2013 WL 12182139, at *1 (E.D. Mich. Apr. 11, 2013) (same); *Borroughs Corp. v. BCBSM*, No. 2:11-CV-12557, 2012 WL 1229895, at *4 (E.D. Mich. Apr. 12, 2012) (same).

Relevant here, BCBSM previously attempted to conceal internal claims-processing failures exposed by former account manager Dennis Wegner. Mr. Wegner reported concerns and identified errors in BCBSM's systems; BCBSM instructed him to "stand down," not to alert

customers, and ultimately terminated his employment. He then filed a whistleblower action, *Wegner v. BCBSM*, No. 19-001808-CD (Wayne Cnty. Cir. Ct.).

In *Comau v. BCBSM*, No. 19-12623 (E.D. Mich), as here, the plaintiff sued to hold BCBSM accountable for such claims-processing failures. BCBSM again pursued delay tactics and lodged baseless objections, prompting repeated motion practice. The Eastern District repeatedly rejected BCBSM's objections and compelled BCBSM to produce responsive documents. *See* Order on Comau Mot. to Compel, (ECF No.87-1, PageID.1447-1449) (granting Comau's motion and compelling production of documents); *see also* Order on BCBSM Mtn. to Quash and for Protective Order, (ECF No. 87-3, PageID.1490-1503 (denying BCBSM's motion to quash and to stay discovery). Notably, the documents the court compelled in *Comau* are nearly identical to the discovery Tiara Yachts now seeks.

B. BCBSM'S FIDUCIARY CONTROL AND SYSTEMIC MISMANAGEMENT OF TIARA YACHTS' PLAN.

Tiara Yachts sponsors a self-funded ERISA plan and retained BCBSM to administer claims and pay them from Plan assets held in a BCBSM-controlled account. Compl., ECF No. 1, ¶¶ 11–21 (PageID.3); *Tiara Yachts*, 138 F.4th at 461. Exercising discretionary authority over plan interpretation, claims adjudication, and payment, BCBSM is an ERISA fiduciary. *Id.* at 466.

Tiara alleges BCBSM knowingly operated flawed claims-processing logic (including NASCO "flip logic") that paid excessive amounts and then concealed the problem. Compl., ECF No. 1, ¶¶ 37–65, 101–08 (PageID.6–9, 15–16). BCBSM also implemented a Shared Savings Program ("SSP") that monetized BCBSM's own overpayments by taking a "shared savings" fee when it avoided or recovered improper payments. *Id.*, ¶¶ 70–85 (PageID.9–12); *Tiara Yachts*, 138 F.4th at 468–70. As the Sixth Circuit recognized, that structure created a perverse incentive and

conflicts relevant to Tiara's fiduciary-breach and prohibited-transaction claims. *Tiara Yachts*, 138 F.4th at 466–70.

C. TIARA YACHTS' DISCOVERY REQUESTS ARE TARGETED TO CORE ISSUES.

On August 4, 2025, Tiara Yachts served its first set of tailored interrogatories and requests. See *Tiara Yachts Mot. to Compel*, Ex. D (ECF No. 87-4, PageID.1504-1524). The requests focus on:

- Tiara Yachts' complete claims data and Tiara-specific plan records (*e.g.*, fee schedules, billing reports, settlements, invoices). RFP Nos. 28, 29, 31–33, 44, 53, 57, 60–61; Ints. Nos. 3, 5–7.
- BCBSM's internal policies, training, systems, audits, and investigations addressing excessive/fraudulent claims and claims-processing logic (including NASCO). RFP Nos. 4–8, 21–24, 27, 30, 33, 35, 54, 62–63; Ints. Nos. 2, 4, 8–9, 11.
- Wegner's investigation and related litigation materials illuminating BCBSM's knowledge and concealment of systemic overpayments. RFP Nos. 9–19, 34, 36–43.
- SSP/Payment Integrity design, vendor relationships, disclosures, and application to self-funded customers. RFP Nos. 55–56, 58–59, 61; Int. No. 10.
- BlueCard program materials relevant to out-of-state claims processing. RFP No. 45.

D. BCBSM REFUSED TO PRODUCE ANYTHING AND MOVED FOR A PROTECTIVE ORDER.

Before responses were due, Tiara Yachts invited discussion to streamline production, confirmed it sought only relevant information, and proposed an agreed protective order to address confidentiality. 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, served boilerplate objections, produced nothing, and then filed this motion. ECF No. 82. Despite further meet and confers, BCBSM still refuses to commit to producing even Tiara Yachts' own claims data.

III. GOVERNING LEGAL STANDARDS

Parties may obtain nonprivileged matter relevant to any claim or defense and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The relevancy threshold is "extremely liberal." *See United States v. Hamilton*, 574 F. Supp. 3d 461, 466 (E.D. Mich. 2021).

To obtain a protective order, the movant bears the burden to show "good cause" with specific facts demonstrating a clearly defined and serious injury. Fed. R. Civ. P. 26(c)(1); *Nix v. Sword*, 11 F. App'x 498, 500 (6th Cir. 2001); *Nemir v. Mitsubishi Motors*, 381 F.3d 540, 550 (6th Cir. 2004). Conclusory assertions or generalized burden claims are insufficient, as there is a strong presumption in favor of disclosure. *See id.*; *In re Nat'l Prescription Opiate Litig.*, 927 F.3d 919, 931 (6th Cir. 2019).

Broad discovery promotes a fair contest. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958). When good cause is not shown, discovery should proceed. Fed. R. Civ. P. 26(c)(3).

IV. ARGUMENT

A. THE "RELATING TO" PHRASING DOES NOT RENDER TIARA YACHTS' REQUESTS OVERBROAD OR NON-PARTICULAR.

BCBSM seeks to avoid all requests that use "relating to," asserting they are categorically overbroad and lack particularity. Courts in this Circuit routinely reject such blanket objections. *See Horizon Global Ams., Inc. v. Curt Mfg., LLC*, No. 17-11879, 2025 WL 1096398, at *5 (E.D. Mich. Apr. 11, 2025) ("Boilerplate objections amount to no objection at all."); *Cook v. Mich. Dep't of Corr.*, No. 1:21-cv-817, 2023 WL 11882938, at *4–5 (W.D. Mich. June 20, 2023), objections overruled, 2023 WL 11882937 (W.D. Mich. Oct. 30, 2023). Requests using "relating to" are proper where the subject matter is clear and limited to specific topics at issue. In fact, Federal Rule of Civil Procedure 26 itself provides that discovery "related to" relevant subjects is permitted:

"Parties may obtain discovery **related to** any nonprivileged matter relevant to any party's claim or defense[.]" *Grunberger v. Mueller*, No. 21-12556, 2024 WL 443480, at *2 (E.D. Mich. Jan. 17, 2024) (citing Fed. R. Civ. P. 26) (emphasis added).

Tiara Yachts' requests are targeted to discrete subjects central to the claims and defenses, for example:

- BCBSM's policies/training/systems for identifying and responding to excessive/fraudulent claims (RFP Nos. 4–8, 54).
- BCBSM's audits/investigations of overpayments for Tiara Yachts and others (RFP Nos. 22–24, 33).
- BCBSM's SSP/Payment Integrity documents and vendor communications (RFP Nos. 55–56, 58, 61).
- BCBSM's claims-processing logic and investigations/disclosures about its implications (RFP Nos. 62–63).

These are not amorphous "all documents about the complaint" requests. They are precisely the materials BCBSM must search and produce in any fiduciary-breach case involving systemic claims-processing failures. Indeed, in *Comau*, the court compelled production across the same "relating to" categories BCBSM challenges here. *See* Order on Comau Mot. to Compel, (ECF No.87-1, PageID.1447-1449). BCBSM's boilerplate objections to the phrase "relating to" are precisely the kind of "stereotyped and conclusory statements" that fail to meet the burden of "clearly defined and serious injury." *Nix*, 11 F. App'x at 500; *Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 550 (6th Cir. 2004).

For these reasons, BCBSM's reliance on an 18-year-old out-of-circuit decision (*Donnelly*) is misplaced. Courts in this Circuit distinguish generic, unlimited "relating to" requests from those, like Tiara Yachts' requests, tied to specific topics, entities, and programs. *See Ecolab, Inc. v. Ridley*, No. 1:22-cv-50, 2023 WL 11762786, at *9 (E.D. Tenn. Mar. 31, 2023) ("The 18-year-old

case from the Middle District of North Carolina on which Plaintiffs base this argument is readily distinguishable."). And, ironically, BCBSM itself has used "related to" phrasing and successfully moved to compel responses regarding the same. *See BCBSM v. Express Scripts, Inc.*, No. 2:23-cv-11213, 2024 WL 1937825, at *2–4 (E.D. Mich. May 2, 2024).

In sum, BCBSM has shown no particularized burden from the phrase "relating to," and Rule 34's "reasonable particularity" requirement is satisfied. The Court should deny BCBSM's motion and compel responses.

B. BCBSM'S PROPOSED SIX-YEAR CUTOFF IS IMPROPER; TEMPORAL LIMITS SHOULD FOLLOW THE FACTS, NOT FORECLOSE THEM.

BCBSM asks the Court to cap discovery at ERISA's six-year repose period, arguing that materials pre-dating July 1, 2016, are "facially irrelevant" and disproportional. That is wrong for several independent reasons.

First, the Court has already determined that BCBSM's time-bar arguments are not ripe absent a developed factual record. *See* Transcript at 13:15-20 (ECF No. 81, PageID.1310) ("[t]he better way of handling [Tiara Yachts' Complaint] is with a **fully developed factual record.**") (emphasis added). BCBSM's proposal would decide timeliness now—without discovery—by precluding production of the very documents bearing on knowledge, concealment, accrual, and continuing violations.

Second, discovery routinely encompasses materials outside the direct actionable period where they illuminate knowledge, pattern, motive, operation of systems, or concealment. *See Cratty v. City of Wyandotte*, 296 F. Supp. 3d 854, 859 (E.D. Mich. 2017) ("[U]nder Federal Rule of Civil Procedure 34(a)(1), a party is required to produce evidence within its 'possession, custody, or control' **without any time-period limitation.**") (emphasis added); *United States v. Quicken Loans Inc.*, No. 16-cv-14050, 2017 WL 2306444, at *2-3 (E.D. Mich. May 26, 2017) (ordering

production of emails "regardless of date" because communications about past conduct can be probative); *Arvco Container Corp. v. Weyerhaeuser Co.*, No. 1:08-CV-548, 2009 WL 311125, at *4 (W.D. Mich. Feb. 9, 2009) (explaining that plaintiff is ordinarily permitted to discover defendant's activities "antedating the earliest possible date of the actual wrong."). Indeed, "Parties may speak or write about past activities or transactions in a way that sheds relevant light on the innocent or guilty nature of their acts—and that light is not dimmed simply because the evidence was generated after the lapse of the period embracing the wrongful acts." *Id.* at *2. Wegner's investigation, for example, revealed systemic issues dating back to at least 1997; documents in that period are probative of BCBSM's knowledge, systemic design, and concealment, and are discoverable.

Third, BCBSM's conduct constitutes repeated fiduciary breaches and prohibited transactions—each payment error and each SSP charge is a discrete violation. *See* 29 U.S.C. § 1113; *In re Trans-Indus., Inc.*, 538 B.R. 323, 354-55 (Bankr. E.D. Mich. 2015) (new cause of action accrues with each repeated violation). Pre-repose documents illuminate later violations and are proportional to the needs of the case.

The cases BCBSM cites do not mandate a blanket cutoff. Some involved deposition timeframes, not document discovery; others reflect unopposed limits. *See, e.g., Majestic Bldg. Maint., Inc. v. Huntington Bancshares Inc.*, No. 2:15-CV-3023, 2018 WL 3358641, at *10 (S.D. Ohio July 10, 2018) (holding that the opposing party "may, however, serve written discovery" on the topics outside of the deponents' time frame of knowledge); *Arenas v. Unified Sch. Dist. No.223*, No.15-CV-9359-JWL-TJJ, 2016 WL 6071802, at *6 (D. Kan. Oct. 17, 2016) ("Defendant objects on the basis that [the deposition topic] is not properly limited in time, but designates a witness and states that it has produced documents relating to this topic."); *Greene v. Sears Prot. Co.*, No.15 C

2546, 2017 WL 1134484, at *5 (N.D. Ill. Mar. 27, 2017) (plaintiff did not develop argument opposing discovery limits); *Wilson v. MRO Corp.*, No.2:16-CV-05279, 2017 WL 561333, at *2 (S.D.W. Va. Feb. 10, 2017) (plaintiff did not bring a claim for the limitations period it argued applied). None holds that Rule 26(b)(1) confines document discovery to a statute of repose.

Finally, BCBSM offers no affidavit or evidence of burden from producing pre-2016 materials. That failure is dispositive. *See Nolan, L.L.C. v. TDC Int'l Corp.*, No. CIV.A. 06-CV-14907, 2007 WL 2983633, at *4 (E.D. Mich. Oct. 11, 2007) ("An objecting party must specifically establish the nature of any alleged burden, usually by affidavit or other reliable evidence.") (quotation omitted); *Jordan v. Caruso*, No. 2:08-CV-261, 2011 WL 2174429, at *1 (W.D. Mich. June 2, 2011) (observing that an "affidavit is often required to establish that a request is overly burdensome"); *Trier v. Genesee Cty.*, No. 2:17-CV-10236, 2017 WL 5897057, at *3, n.1 (E.D. Mich. Aug. 2, 2017) (same). Generalized assertions about discovery expense are insufficient. *See El Camino Res. Ltd. v. Huntington Nat'l Bank*, No. 1:07-cv-598, 2008 WL 2557596, at *4 (W.D. Mich. June 20, 2008).

C. WEGNER-RELATED MATERIALS AND BCBSM'S INTERNAL INVESTIGATIONS ARE DIRECTLY RELEVANT AND PROPORTIONAL TO THE NEEDS OF THIS CASE.

BCBSM contends that materials concerning the Wegner investigation and lawsuit, and other internal investigations of claims-processing issues, are irrelevant. Not so.

"The threshold for establishing relevance is quite low and the relevancy standard is 'extremely liberal.'" *Hamilton*, 574 F. Supp. 3d at 466 (E.D. Mich. 2021). This case concerns BCBSM's flawed claims-processing logic and systemic payment errors, its knowledge of those flaws, its failure to correct them, and concealment. Wegner investigated and documented those same systemic flaws. The systems and logic he examined apply across BCBSM's self-funded customers, including Tiara Yachts. *See* Compl., ECF No. 1, ¶¶ 37–65, 101–08 (PageID.6–9, 15–

16); *Tiara Yachts*, 138 F.4th at 461–65 (system-wide decisions led to systematic overpayments). Materials from Wegner's investigation and litigation—regardless of specific customers referenced—are probative of BCBSM's knowledge, the operation and scope of the flaws, and concealment. See *State Farm Mut. Auto. Ins. Co. v. Angelo*, No. 19-10669, 2020 WL 6608887, at *2 (E.D. Mich. Nov. 12, 2020) (communications/data from other insurers relevant to the existence and scope of fraud scheme); *United States v. Eng.*, 785 F.3d 1052, 1055–56 (6th Cir. 2015) (related schemes admissible to show knowledge/absence of mistake).

Proportionality likewise favors production of the Wegner file. BCBSM already possesses the requested materials, and the documents can therefore be readily retrieved with minimal burden. Of course, BCBSM alone controls these documents, and *Tiara Yachts* has no alternative source for obtaining them. In a similar case with substantial amounts in controversy, the *Comau* court relied on similar reasoning to compel "discovery related to alleged non-[plaintiff] overpayments more generally," and "material from the Wegner case" including "Mr. Wegner's investigations and communications." Order on *Comau* Mot. to Compel, (ECF No.87-1, PageID.1447-1449). The Court should do no differently here.

BCBSM also objects to discovery into communications "regarding this case" and post-contract conduct. *Tiara Yachts* is not seeking privileged communications or counsel's work product. It seeks non-privileged facts, pre-suit investigative materials, and internal non-privileged documents concerning BCBSM's systems and their implications. To the extent responsive materials reflect attorney mental impressions or were created at counsel's direction, BCBSM can assert privilege and log them. See Fed. R. Civ. P. 26(b)(5). But BCBSM cannot withhold all internal, non-privileged materials concerning the systems at issue under the guise that they do not "relate to this case."

BCBSM's reliance on *Roe v. Univ. of Cincinnati*, No. 1:22-CV-00376-JPH-KLL, 2025 WL 1696974 (S.D. Ohio June 17, 2025) is inapposite. There, the requested materials bore no proportional relationship to the claims. Here, the internal investigations, training, and policies governing claims-processing logic and overpayment detection go to the heart of Tiara Yachts' fiduciary-breach claims.

D. TIARA YACHTS' CLAIMS DATA AND BCBSM'S SYSTEMS/POLICIES/SSP MATERIALS ARE CENTRAL TO LIABILITY AND DAMAGES.

BCBSM resists producing several categories of information and documents based on relevance. BCBSM's arguments are all meritless—indeed, frivolous.

First, BCBSM resists producing Tiara Yachts' complete claims data. But that data (identifying providers, members, services, dates, amounts billed/paid, repricing, etc.) is the cornerstone of BCBSM's liability and Tiara Yachts' damages. *See* Compl., ECF No. 1, ¶¶ 86–101 (PageID.12–15); *Tiara Yachts*, 138 F.4th at 462 (recognizing BCBSM's exclusive control over Tiara Yachts' claims data). Without it, Tiara Yachts cannot identify overpayments or SSP charges. BCBSM's suggestion of "mutually agreeable search terms" to limit scope is unworkable for structured, numbered data; claims data must be produced in full and in a usable, complete format as requested. BCBSM may not cabin production to a keyword search.

Second, BCBSM has also refused to produce documentation and information on its internal systems, policies, training, audits, and investigations regarding excessive/fraudulent claims and claims-processing logic (including its NASCO system and "flip logic" algorithm). These materials show what BCBSM knew, when it knew it, the operation of its systems, and whether it acted prudently to protect plan assets—all central to fiduciary status and breach. *See Tiara Yachts*, 138 F.4th at 465–70.

Third, BCBSM has withheld its documents and information on its SSP/Payment Integrity design, vendor relationships, disclosures, and application of those programs to its self-funded customers. These materials bear on Tiara Yachts' prohibited-transaction and self-dealing allegations, and on BCBSM's defenses (e.g., disclosure/consent). See Compl., ECF No. 1, ¶¶ 70–85, 110–15 (ECF No.9–12, 21). Interrogatory No. 10 (vendors) is directly relevant to understanding the SSP and related cost-containment programs. Tiara Yachts Mot. to Compel, Ex. D (ECF No. 87-4, PageID.1512). It is not a "fishing expedition" about unrelated customers; it provides the roadmap to targeted discovery of BCBSM's self-dealing arrangements that applied to Tiara Yachts.

Fourth, BCBSM has refused to produce Tiara Yachts' account-level statements. Although BCBSM objects to producing its own corporate financial statements, counsel for Tiara Yachts clarified at the parties' meet-and-confer that Tiara Yachts is only seeking BCBSM's Annual Statements/Summaries and DIFS/Statutory statements *specific to* Tiara Yachts' account—i.e., documents reflecting claims processed, fees charged (by category), and other plan-level financial data for Tiara Yachts. Those are plainly relevant, given Tiara Yachts' allegations that BCBSM failed to implement industry-standard controls, ignored internal warnings, and concealed the implications of its flawed claims processing logic. Compl. at ¶¶44-60, 86, 104-108 (ECF No.1, PageID.7-9, 12, 18-19); *see also Tiara Yachts*, 138 F.4th at 466-70 (holding that such conduct constitutes actionable fiduciary breaches).

Fifth, BCBSM resists producing its BlueCard program materials. The BlueCard program is central to out-of-state claims processing underlying the NASCO "flip logic" and overpayment issues. RFP No. 45 targets the program's policies and disclosures. Tiara Yachts is entitled to

BCBSM's production of those materials for the contractual period (2006–2018), as well as the preceding years tied to the 1997 logic change at issue.

E. BCBSM HAS NOT SHOWN BURDEN OR DISPROPORTIONALITY; PRACTICAL GUARDRAILS ARE AVAILABLE.

BCBSM offers no affidavit or concrete showing of burden tied to any request, and that alone defeats its Rule 26(c) motion. *See Nolan*, 2007 WL 2983633, at *4; *Jordan*, 2011 WL 2174429, at *1. General protestations that discovery is expensive do not establish "good cause." *El Camino*, 2008 WL 2557596, at *4. For each of Tiara Yachts' discovery requests, the proportionality factors favor disclosure: the importance of the issues (ERISA fiduciary breaches); substantial amounts at stake (millions of dollars); BCBSM's exclusive access to the evidence; and the critical need for the information to resolve the case on the merits. *See* Fed. R. Civ. P. 26(b)(1).

If the Court prefers calibrated measures, *Comau* provides a workable model the parties can implement here:

- Immediate production of Tiara Yachts' complete claims data for the contractual period in a usable format, with agreed to fields, and in one complete tranche (not piecemeal) to avoid integrity issues.
- Production of discovery related to alleged non-Tiara Yachts overpayments more generally; the identities of customers other than Tiara Yachts may be redacted, but without prejudice to Tiara Yachts seeking disclosure of the names at a later date.
- Production of BCBSM's internal systems/policies/training, SSP/Payment Integrity materials, and all Wegner-related materials, subject to a confidentiality order and privilege logging.
- An initial temporal floor of at least 2008 for systemic categories (as in *Comau*), without prejudice to seeking earlier materials if warranted; Tiara Yachts-specific categories should span the contractual period (2006–2018) and thereafter as necessary to reflect corrective actions, SSP recoveries, and disclosures.

See Tiara Yachts Mot. to Compel, Ex. A (ECF No.87-1, PageID.1447-1449). Here, Tiara Yachts has already provided BCBSM a proposed confidentiality order, which BCBSM has ignored.

Moreover, the parties have also reached substantial agreement on an ESI protocol, as reflected in the Joint Pretrial Report. *See* ECF No. 75, PageID.1269-71. To the extent necessary, Tiara Yachts stands ready to meet and confer on reasonable sequencing and other ESI logistics.

F. BCBSM'S REMAINING TOPIC-SPECIFIC OBJECTIONS LACK MERIT.

BCBSM's remaining topic-specific objections likewise lack merit. For example, Tiara Yachts requested BCBSM produce all "Documents supporting your defenses." RFP No. 25. That is a standard request. BCBSM may not hide the ball on the affirmative materials it intends to rely on.

Tiara Yachts also requested BCBSM produce all communications with providers disputing Tiara Yachts' claims (RFP No. 3), fee schedules (RFP No. 29), billing reports and settlements/invoices (RFP Nos. 28, 53, 60), and any disclosures to Tiara Yachts (RFP No. 59). All are core, Tiara Yachts-specific documents.

Tiara Yachts also requested BCBSM produce all communications on the Wegner case (RFP Nos. 46–47; Int. No. 1). As noted, Tiara Yachts does not seek any privileged communications or attorney work product. BCBSM must produce non-privileged responsive materials and log anything withheld.

BCBSM's "offer" to search for "relevant" documents using "mutually agreeable search terms within the relevant timeframe" is no excuse from its discovery obligations. Tiara Yachts is entitled to all discoverable documents. Search terms, if used to manage a large corpus, are merely a collection tool: BCBSM must still produce all documents hit by the agreed terms without a separate "responsiveness" screen, and Tiara Yachts may seek supplemental terms if the initial results reveal gaps. This is particularly true of structured claims data and Tiara Yachts-specific account records, which must be produced in full.

V. CONCLUSION

Tiara Yachts respectfully requests entry of an order denying BCBSM's motion, compelling production as set forth above, and awarding such other relief as is just and appropriate.

BCBSM has not provided any evidence demonstrating that it will suffer substantial injury should it be required to produce responsive documents. Without this showing, the Court should deny BCBSM's motion and order immediate production of responsive materials, including Tiara Yachts' complete claims data, internal policies/systems/training/audits, Wegner-related materials, SSP/Payment Integrity documents, BlueCard materials, and Tiara Yachts-specific account statements and plan records, subject to a confidentiality order and privilege logs.

Alternatively, the Court can adopt *Comau*'s practical framework: (i) compel the above categories; (ii) set an initial temporal floor of at least 2008 (with the Tiara Yachts-specific categories spanning the 2006–2018 contractual period and beyond as necessary); (iii) require rolling production on a near-term schedule; (iv) direct the parties to finalize an ESI protocol within 14 days; and (v) require BCBSM to substantiate any future burden objections with affidavits.

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 L. Civ. R. 7.3(b)(ii) because this document, generated using Microsoft Word 2010, contains 4,111 words.

/s/ Aaron M. Phelps

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