

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

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendant.

Civil Action No.: 1:22-cv-603

Judge: Hon. Robert J. Jonker

Magistrate Judge: Ray Kent

**ANSWER OF DEFENDANT BLUE CROSS BLUE SHIELD OF MICHIGAN
TO THE COMPLAINT**

Defendant Blue Cross Blue Shield of Michigan (“BCBSM”), by and through its attorneys Allen Overy Shearman Sterling US LLP and Zausmer, P.C., hereby answers Plaintiff’s Complaint dated July 1, 2022 (ECF No. 1).

INTRODUCTORY STATEMENT

Except as otherwise expressly set forth below, BCBSM denies each and every allegation contained in the Complaint including, without limitation, the section headings of the Complaint. BCBSM expressly reserves the right to amend and/or supplement its Answer and Defenses. All allegations not expressly admitted are denied.

BCBSM also respectfully submits that the Complaint contains numerous purported allegations that constitute legal conclusions. As BCBSM is not required to respond to legal conclusions in its Answer, BCBSM neither admits nor denies those purported allegations. To the extent a response is required, BCBSM denies such allegations, unless otherwise stated.

BCBSM further respectfully submits that the headings, sub-headings, footnotes, defined terms and references, and unnumbered paragraphs used in the Complaint do not require

a response, but, for the avoidance of doubt, to the extent they contain allegations against BCBSM, any such allegations are denied.

The Complaint includes references to purported descriptions and/or summaries of, and purported quotations from, various documents. In appropriate cases, BCBSM respectfully refers the Court to the relevant documents for a complete and accurate description of their contents without admitting the truth thereof or the admissibility of the documents. To the extent that those purported descriptions, summaries, and quotations are taken from sources not specifically identified in the Complaint or not in BCBSM's possession, or are otherwise unclear, BCBSM lacks knowledge or information sufficient to form a belief as to the truth of the relevant allegations and, in the case of quotations, as to the accuracy of such quotations.

This Answer has adopted the paragraph numbering used in the Complaint. To the extent any numbered paragraphs are out of order, skipped, or duplicated in this Answer, the same numbering issues appear in the Complaint.

Subject to the foregoing, as and for its Answer to Plaintiff's Complaint, BCBSM pleads as follows:

SPECIFIC RESPONSES

NATURE OF ACTION

1. Tiara Yachts hired BCBSM to administer its self-funded health benefits plan (the "Plan") that Tiara Yachts offers to its employees and their dependents. This arrangement is governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.*, and the terms of the Plan.

ANSWER: BCBSM admits that BCBSM provided certain services to the Tiara Yachts self-funded health benefits plan (the "Plan") pursuant to the parties' Administrative Services Contract (the "ASC") and respectfully refers the Court to the ASC, ECF No. 12-

2, for a description of those services, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in the first sentence of Paragraph 1. The allegations contained in the second sentence of Paragraph 1 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in the second sentence of Paragraph 1.

2. Tiara Yachts recently discovered that BCBSM is aware of flaws in its claims processing system that caused it to overpay for claims with Tiara Yachts' money. Instead of fixing the system failures, BCBSM concealed them from Tiara Yachts for reasons that appear to advance BCBSM's own interests. BCBSM continues to conceal its misconduct, in part, by maintaining exclusive control of Tiara Yachts' complete claims data and other information, which is necessary to comprehensively identify all improper payments and other wrongdoing.

ANSWER: BCBSM denies the allegations contained in Paragraph 2.

3. BCBSM's mismanagement of Plan Assets clearly constitutes a breach of BCBSM's fiduciary duty of care under ERISA. Tiara Yachts brings this suit to recover the misappropriated funds and obtain all other relief to which it is entitled.

ANSWER: The allegations contained in the first sentence of Paragraph 3 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 3.

PARTIES, JURISDICTION AND VENUE

4. Tiara Yachts is a Michigan corporation, with its principal location in Holland, Michigan.

ANSWER: BCBSM lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4.

5. BCBSM is a Michigan non-profit health care corporation organized under the Nonprofit Health Care Corporation Reform Act, MCL 550.1101, *et seq.*

ANSWER: BCBSM admits that it is a non-profit mutual insurance corporation organized pursuant to MCL 550.1120 and MCL 500.5808.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132 because Tiara Yachts' claims arise under ERISA.

ANSWER: The allegations contained in Paragraph 6 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 6.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because BCBSM resides in the Western District of Michigan and a substantial part of the events or omissions giving rise to the claim occurred in the Western District of Michigan. Venue is also proper pursuant to 29 U.S.C. § 1132(e)(2).

ANSWER: The allegations contained in Paragraph 7 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM admits that venue is proper in the Western District of Michigan.

GENERAL ALLEGATIONS

8. Tiara Yachts hereby incorporates by reference the allegations contained in the preceding Paragraphs.

ANSWER: BCBSM incorporates by reference its responses to Paragraphs 1 through 7.

9. Tiara Yachts, formally S2 Yachts, Inc., is in the business of designing and manufacturing boats.

ANSWER: BCBSM lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

10. Tiara Yachts offers health care benefits through the Plan. Rather than buy health insurance to cover employee health care claims under the Plan, during the relevant time period Tiara Yachts opted to self-insure. As such, Tiara Yachts paid the actual employee health care costs covered by the Plan, up to a large threshold. Tiara Yachts bought “stop loss” insurance to cover claims that exceeded that threshold.

ANSWER: BCBSM lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph 10. As to the remaining allegations contained in Paragraph 10, BCBSM admits that it provided certain services to the Plan pursuant to the parties’ ASC and respectfully refers the Court to the ASC, ECF No. 12-2, for a description of those services, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegation.

11. Years ago, BCBSM began providing administrative services to Tiara Yachts and Tiara Yachts’ self-funded health benefits Plan.

ANSWER: BCBSM admits the allegations contained in Paragraph 11.

12. A self-funded arrangement is one in which the company (Tiara Yachts in this case) self-insures the health care claims of its employees instead of buying an insurance policy. Generally speaking, for every dollar of claims incurred by an employee, the self-funded entity pays that dollar. In order to self-fund, the company contracts with an administrator to process and pay the claims in exchange for a disclosed fee.

ANSWER: BCBSM admits that BCBSM provided certain services to the Plan pursuant to the parties' ASC and respectfully refers the Court to the ASC, ECF No. 12-2, for a description of those services, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 12.

A. TIARA YACHTS HIRED BCBSM TO SERVE AS THE PLAN'S ADMINISTRATOR.

15. Tiara Yachts hired BCBSM to provide administrative services for the Plan.

ANSWER: BCBSM admits that BCBSM provided certain services to the Plan pursuant to the parties' ASC and respectfully refers the Court to the ASC, ECF No. 12-2, for a description of those services, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 15.

16. In exchange, BCBSM charged Tiara Yachts a monthly administrative fee.

ANSWER: BCBSM admits the allegations contained in Paragraph 16.

17. BCBSM and Tiara Yachts first executed an Administrative Services Contract ("ASC") on January 1, 2006. They renewed the ASC annually, until Tiara Yachts terminated the relationship in or about December of 2018.

ANSWER: BCBSM admits the allegations contained in Paragraph 17 and respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 17.

18. The ASC delegates to BCBSM certain Plan administration responsibilities that Tiara Yachts would otherwise retain, including but not limited to interpreting Plan terms, calculating benefits, and using Tiara Yachts' Plan assets to pay for health care services.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a

complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 18.

19. BCBSM's administrative fee included a host of services, including but not limited to claims processing, check writing, case management, anti-fraud services, and cost containment.

ANSWER: BCBSM admits that BCBSM provided certain services to the Plan pursuant to the ASC and that BCBSM received an administrative fee pursuant to the ASC and respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 19.

20. BCBSM was to perform its administrative services in accordance with the health care benefits selected by Tiara Yachts.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 20.

21. In essence, BCBSM would process and pay claims on behalf of Tiara Yachts using Tiara Yachts' Plan assets.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 21.

22. Tiara Yachts sent the required prepayments to a BCBSM-owned bank account, on a periodic basis, in order for BCBSM to pay claims on Tiara Yachts' behalf.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for

a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 22.

23. The prepayments sent to BCBSM's bank account were "Plan Assets" as defined by ERISA. *See* Findings of Fact & Conclusions of Law in *Hi-Lex Controls, Inc. v. BCBSM*, No. 11- cv-12557, 2013 WL 3773364 (E.D. Mich. July 17, 2013), and *aff'd sub nom. Hi-Lex Controls, Inc. v. BCBSM*, 751 F.3d 740 (6th Cir. 2014), (the "*Hi-Lex* FFCL") at ¶¶ 5, 6, & 180; *Hi-Lex*, 751 F.3d at 745-46.

ANSWER: The allegations contained in Paragraph 23 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 23.

24. BCBSM had complete authority and control over the bank account and the Plan assets sent to it by Tiara Yachts.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and denies any inconsistent allegations contained in Paragraph 24.

25. BCBSM (a) exercised discretionary authority and control with respect to management of the Plan; (b) exercised authority and control with respect to management and disposition of Plan Assets; or (c) had discretionary authority and responsibility in the administration of the Plan. *Hi-Lex* FFCL, at ¶¶ 180-82; *Hi-Lex*, 751 F.3d at 744-47.

ANSWER: The allegations contained in Paragraph 25 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 25.

26. BCBSM functioned as a fiduciary in its administration of the Plan. *See* 751 F.3d at 747 (“common law supports the conclusion that BCBSM was holding the funds wired by Hi–Lex ‘in trust’ for the purpose of paying plan beneficiaries’ health claims and administrative costs. Accordingly, the district court did not err in finding that BCBSM held plan assets of the Hi–Lex Health Plan and, in doing so, functioned as an ERISA fiduciary”).

ANSWER: The allegations contained in Paragraph 26 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 26.

B. CLAIMS ASSOCIATED WITH OUT-OF-STATE PROVIDERS.

27. BCBSM was also responsible for administering the plan with respect to claims submitted by out-of-state providers.

ANSWER: BCBSM admits that the ASC governs BCBSM’s responsibilities with respect to out-of-state providers and respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 27.

28. BCBSM is an independent licensee of the Blue Cross and Blue Shield Association (“Association”).

ANSWER: BCBSM admits the allegations contained in Paragraph 28.

29. The Association is a national federation comprised of 38 independently licensed, community-based and locally operated Blue Cross Blue Shield Companies. These companies are colloquially known as “The Blues.”

ANSWER: BCBSM denies the allegations contained in Paragraph 29.

30. BCBSM and other Blues participate in the BlueCard Program. The BlueCard Program is a national program that enables members of one Blue Plan to obtain health care service benefits while traveling or living in another Blue Plan's service area (the "Host Blue").

ANSWER: BCBSM admits that the ASC describes the availability of the BlueCard Program and respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 30.

31. The BlueCard Program links participating health care providers with the independent Blue Plans operating throughout the world through a single electronic network for claims processing and reimbursement.

ANSWER: BCBSM admits that the ASC describes the BlueCard Program and respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 31.

32. This program allows BCBSM to instantly transfer and receive claim and member- eligibility information between the Blues when processing out-of-state claims.

ANSWER: BCBSM admits that the ASC describes availability of the BlueCard Program for plan beneficiaries and respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 32.

33. BCBSM remains responsible to the Group for fulfilling BCBSM's

contractual obligations when members access covered health care services within the geographic area served by a Host Blue.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 33.

34. The Group's liability on claims submitted by participating providers is based on the negotiated price made available to BCBSM by the Host Blue.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 34.

35. BCBSM charged Tiara Yachts host fees for claims processed through the BlueCard Program, including but not limited to fees and compensation BCBSM pays to the Host Blues, the Association, and other vendors, an additional administrative service fee, and, if applicable, a network access fee.

ANSWER: BCBSM respectfully refers the Court to the ASC, ECF No. 12-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 35.

C. **BCBSM'S PRACTICE OF PAYING IMPROPER CLAIMS COMES TO LIGHT.**

37. Dennis Wegner was a senior account manager at BCBSM. He worked at BCBSM for 18 years, serving many customers, and is now credited for bringing BCBSM's prolific mismanagement of customers' assets to light.

ANSWER: BCBSM denies the allegations contained in Paragraph 37, except that it admits that Dennis Wegner worked at BCBSM for over 20 years and was an account

manager at BCBSM.

38. While serving as an account manager, Dennis Wegner was alerted by a BCBSM customer about a significant medical claim the customer received in excess of \$250,000.

ANSWER: BCBSM denies the allegations contained in Paragraph 38, except that it admits that Dennis Wegner was an account manager at BCBSM.

39. Dennis Wegner investigated the customer's complaint and discovered that BCBSM was overpaying for routine medical testing.

ANSWER: BCBSM denies the allegations contained in Paragraph 39.

40. In that particular customer's case, BCBSM had overpaid more than \$600,000 within a two-year period.

ANSWER: BCBSM denies the allegations contained in Paragraph 40.

41. Dennis Wegner brought the issue to BCBSM's attention, and to Dennis Wegner's surprise BCBSM's management confirmed that BCBSM's payment of improper claims are known to happen in the BCBSM billing system, but BCBSM has done nothing to stop them.

ANSWER: BCBSM denies the allegations contained in Paragraph 41.

42. Alarmed that BCBSM's payment of improper claims may not be isolated to one customer, Dennis Wegner researched claims and billings for two other BCBSM customers and found similar overpayments, totaling \$125,000 in one case, and \$75,000 in another case.

ANSWER: BCBSM denies the allegations contained in Paragraph 42, except that BCBSM lacks knowledge or information sufficient to form a belief as to the truth of the

allegations contained in Paragraph 42 regarding Mr. Wegner's motivations.

43. Again, Dennis Wegner brought his concerns about overpayments to BCBSM's attention, but was told to cease researching the issue, to "stand down," and to refrain from alerting any BCBSM customers of improper payments made by BCBSM.

ANSWER: BCBSM denies the allegations contained in Paragraph 43.

44. The improper charges were known by many key employees and executives within BCBSM, including Rod Begosa, David Malik, Lori Shannon, Gary Gavin, Ken Dallafior, Carol Gawronski, Robert Hopper, Dianne Malmgren, Nadiya Delaney, Kimberly Jones-Schneider, Teresa Henry, Pamela A. Braund, Sandra Fester, Aaron Friedkin, Jason M. Hover, Michael McKay Jr., Paul E. Ragos, Robert Rizzo, Diane VanEck, and Jeffrey Connolly. Yet no one at BCBSM took any action to stop the payment of improper claims.

ANSWER: BCBSM denies the allegations contained in Paragraph 44.

45. After Dennis Wegner sounded the alarm, BCBSM's executives held a meeting to discuss the issue and afterwards sent a recap revealing troubling details. 9/14/2017 BCBSM Email Chain, **Exhibit A**.

ANSWER: BCBSM respectfully refers the Court to Exhibit A to the Complaint, ECF No. 1-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 45.

46. BCBSM knew that the majority, if not all, of self-funded, non-auto customers on its NASCO platform, including Tiara Yachts, were impacted by this systems flaw. *Id.*

ANSWER: BCBSM denies the allegations contained in Paragraph 46.

47. BCBSM maintained lists of customers that were affected by this problem.

See e.g., id., with 2017 List of Customers Impacted by Flip Logic, **Exhibit B**.

ANSWER: BCBSM respectfully refers the Court to Exhibit B to the Complaint, ECF No. 1-3, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 47.

48. BCBSM attributed this problem to an intentional design in its programming called “flip logic.” Ex. A, 9/14/2017 BCBSM Email Chain.

ANSWER: BCBSM respectfully refers the Court to Exhibit A to the Complaint, ECF No. 1-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 48.

49. BCBSM implemented flip logic in 1997. Under the logic, when a claim is submitted associated with a non-participating provider, BCBSM’s system “flips” the non-participating provider’s status and processes the claim at charge. 9/19/2017 BCBSM Email Chain, **Exhibit C**.

ANSWER: BCBSM respectfully refers the Court to Exhibit C to the Complaint, ECF No. 1-4, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 49.

50. Thus, by using the flip logic, BCBSM allowed “providers [to] bill and get fully reimbursed for highly inflated cost of services.” Ex. A, 9/14/2017 BCBSM Email

Chain. Essentially, BCBSM would pay whatever was charged for a service, regardless of whether the claim was proper under the plan terms or other applicable reimbursement guidelines and policies. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit A to the Complaint, ECF No. 1-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 50.

51. To be clear, this problem was not isolated to claims associated with laboratory services. The improper payments were not only associated with laboratories, but also with, for example, hospitals, x-rays, and office visits. In reality, anyone could take advantage of BCBSM's flawed system logic.

ANSWER: BCBSM denies the allegations contained in Paragraph 51.

52. BCBSM knew that this "ha[d] been an issue within the company for a number of years." Ex. C, 9/19/2017 BCBSM Email Chain. But, "[i]n the absence of controls in the system logic that would flag suspicious claim activity, claims continue to be processed as 'pay sub at charge,' often many times over and above the customary amount for such services." *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit C to the Complaint, ECF No. 1-4, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 52.

53. Compounding the issue, BCBSM identified at least 201 customers which had "elected to pay at the Host-allowed rate for non-par claims." Ex. C, 9/19/2017 BCBSM

Email Chain, with Ex. B, 2017 List of Customers Impacted by Flip Logic.

ANSWER: BCBSM respectfully refers the Court to Exhibits B and C to the Complaint, ECF Nos. 1-3 and 1-4, for a complete and accurate description of their contents, without admitting the truth thereof or their admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 53.

54. Thus, according to Tiara Yachts' Plan, Tiara Yachts should have been paying for out-of-state, non-par claims at a lower rate set by the applicable Host Blue plan. BCBSM knew this, stating "'Flipping' logic is in direct contradiction with the group-elected benefit." Ex. C, 9/19/2017 BCBSM Email Chain.

ANSWER: BCBSM respectfully refers the Court to Exhibit C to the Complaint, ECF No. 1-4, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 54.

55. In 2016 alone, "BCBSM processed 30,000 non-par claims at charge when Host pricing was available. The sum of those [flip] charges was \$30.5M and resulted in a payment amount of \$26.7M." Had BCBSM applied the Host plan pricing as it was required to do, "the total allowed amount for these claims would have been \$7.1M; a potential savings of \$23.0M in benefit costs." *Id.* (emphasis added).

ANSWER: BCBSM respectfully refers the Court to Exhibit C to the Complaint, ECF No. 1-4, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 55.

56. It gets worse. BCBSM expressly recognized that it 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.” *Id.*

ANSWER: The first sentence in Paragraph 56 is argumentative and no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in the first sentence of Paragraph 56. BCBSM otherwise respectfully refers the Court to Exhibit C to the Complaint, ECF No. 1-4, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 56.

57. However, instead of accepting responsibility as fiduciary for a flawed logic that it created over four decades ago and failed to correct, BCBSM worked to conceal the issue.

ANSWER: BCBSM denies the allegations contained in Paragraph 57.

58. BCBSM acknowledged that its “customers may not be fully aware of the implications of the ‘flipping’ system logic,” and took active steps to conceal the problem from its customers, including Tiara Yachts. Ex. A, 9/14/2017 BCBSM Email Chain.

ANSWER: BCBSM respectfully refers the Court to Exhibit A to the Complaint, ECF No. 1-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies the allegations contained in Paragraph 58.

59. BCBSM was worried that a “Provider pursuing [a] member for [a] large balance may cause a spike in member inquires and groups’ dissatisfaction.” *Id.* Thus, BCBSM would temporarily assume liability for any inconspicuous overcharges that resulted from the flip logic, in order to keep its mismanagement of its customers’ plans

hidden. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit A to the Complaint, ECF No. 1-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies the allegations contained in Paragraph 59.

60. Some BCBSM employees suggested that BCBSM “make a global change to discontinue the logic and pay at Host allowed.” *Id.* Essentially, the suggestion was to process claims in compliance with customers’ selected benefit plans—what BCBSM should have been doing all along. Additionally, the BCBSM employees suggested making impacted customers “aware, educated, and their concurrence be documented.” *Id.* These suggestions were ignored.

ANSWER: BCBSM respectfully refers the Court to Exhibit A to the Complaint, ECF No. 1-2, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies the allegations contained in Paragraph 60.

64. BCBSM continued to conceal its misconduct, and on November 14, 2018, BCBSM terminated Dennis Wegner’s employment after he refused to cease investigating and pressing the issue.

ANSWER: BCBSM denies the allegations contained in Paragraph 64, except that it admits that Dennis Wegner’s employment with BCBSM was terminated on November 14, 2018.

65. On February 5, 2019, Dennis Wegner filed a lawsuit against BCBSM, alleging violations of the Michigan Whistleblowers’ Protection Act and Michigan Bullard-

Plawecki Employee Right-to-Know-Act. *See Dennis Wegner v. BCBSM*, No 19-001808-CD (Wayne Cnty. Cir. Ct.), attached as **Exhibit D**.

ANSWER: BCBSM admits that Dennis Wegner filed a lawsuit captioned as *Dennis Wegner v. BCBSM* in Wayne County Circuit Court and respectfully refers the Court to Exhibit D to the Complaint, ECF No. 1-5, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 65.

D. BCBSM CAPITALIZES ON ITS MISCONDUCT AND MISMANAGEMENT OF ITS CUSTOMERS' PLAN ASSETS.

70. Around the time BCBSM's practice of reimbursing claims at charge was being called into question, BCBSM formulated a plan to capitalize on its misconduct.

ANSWER: BCBSM denies the allegations contained in Paragraph 70.

71. Effective January 1, 2018, BCBSM implemented a package of Payment Integrity Services for all of its self-funded customers using a shared savings arrangement (collectively called the shared savings program ("SSP")). SSP Internal Memo, **Exhibit E**.

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 71.

72. The SSP includes four primary services: a pre-pay forensic bill review, advanced payment analytics, subrogation, and credit balance recovery. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-5, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations

contained in Paragraph 72.

73. “Pre-pay Forensic Bill Review provides a review of high cost inpatient claims to detect and resolve billing errors after adjudication, but prior to payment.” These services are performed by a third-party vendor called Equian. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 73.

74. Equian reviews “all claims meeting [a] \$25,000 threshold that are inpatient and are paid as outliers to current diagnostic edit process, OR are paid under a percent charge reimbursement methodology. This includes both in and out-of-state claims, and Par and Non-par providers.” *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 74.

75. Subrogation generally “involves the detection and recovery of 3rd-party liability claims where a 3rd party is accountable for the expense.” *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 75.

76. Credit Balance Recovery entails the detection and recovery of credit

balances on hospital patient accounting systems due to ASC customers, such as Tiara Yachts. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 76.

77. Last, Advanced Payment Analytics works to identify “claim overpayments not previously detected and recover the overpayment from providers after payment is rendered.” These services are performed by a third-party vendor called Cotiviti. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 77.

78. Prior to implementing Advanced Payment Analytics, BCBSM purportedly performed several post-pay claim review services, included as part of its administrative services fee. These included data mining for provider billing errors, coordination of benefits, and overpayment identification. Cotiviti differs from these services in that it offers a “2nd pass” review for improper payments. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 78.

79. BCBSM’s engagement with Cotiviti was not new. BCBSM had previously

engaged Cotiviti to provide improper payment detection services for BCBSM's own fully insured book of business, and had realized savings of \$12–15 million per year. BCBSM, however, did not engage Cotiviti for its self-insured groups until 2018. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 79.

80. The SSP came with a catch. For any improper payments detected and recovered in connection with these programs, but only as they applied to BCBSM's self-funded customers, BCBSM would retain 30 percent of the avoided or recovered payment. BCBSM marketed its compensation as "administrative compensation." *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 80.

81. BCBSM also made it mandatory for its self-insured customers to participate and automatically opted all self-funded customers into the program. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 81.

82. Cotiviti's review in particular would apply retroactively to improper payments extending back to January 1, 2016. *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit E to the Complaint, ECF No. 1-6, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 82.

83. In effect, for any improper payments Cotiviti detected and recovered—including the improper payments BCBSM knew existed as a result of its flip logic and beyond—BCBSM would take a 30 percent cut.

ANSWER: BCBSM denies the allegations contained in Paragraph 83.

84. Essentially, BCBSM devised a scheme that would allow it to profit on its own mismanagement of plan assets. The more improper payments BCBSM let slide through its system, the more money it would make on the back end. Unfortunately, this came at the expense of BCBSM's self-insured customers, including Tiara Yachts.

ANSWER: BCBSM denies the allegations contained in Paragraph 84.

85. As an ERISA fiduciary, BCBSM must avoid any conflicts of interest concerning the manner in which it performs its fiduciary duty. The SSP creates an impermissible conflict of interest.

ANSWER: The allegations contained in Paragraph 85 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 85.

E. BCBSM FURTHER CONCEALS ITS MISCONDUCT BY GATEKEEPING INFORMATION NECESSARY TO IDENTIFY IMPROPER CHARGES.

86. BCBSM has designed a system in which it knowingly and improperly pays claims, later corrects the claim charge to what it should have been in the first place, at its discretion, and then collects a recovery fee for “catching” the error.

ANSWER: BCBSM denies the allegations contained in Paragraph 86.

87. BCBSM impedes its self-funded customers, including Tiara Yachts', ability to evaluate whether BCBSM is properly paying claims by significantly limiting access to each customers' claims data and other documents that set forth the guidelines and rules for claims processing and pricing.

ANSWER: BCBSM denies the allegations contained in Paragraph 87.

88. Claims data is incredibly in-depth electronic information gathered from medical bills or claims submitted to BCBSM. For example, claims data identifies who rendered a service, the rendering provider(s) specialties and credentials, what service(s) was performed, what amount was billed for the service, what amount BCBSM allowed to be paid out of what was charged, who BCBSM paid, when and where the service was provided, the patient's identity and age, and diagnoses.

ANSWER: BCBSM denies the allegations contained in Paragraph 88, except that it admits that claims data can include information regarding claims.

89. Claims data also shows the line-item detail associated with each claim. For example, when a provider submits a claim for orthopedic surgery, the claim will have each associated cost and service broken down by service line showing the total the provider charged, the amount BCBSM allowed, and what was ultimately paid.

ANSWER: BCBSM denies the allegations contained in Paragraph 89, except that it admits that claims data can include information regarding claims.

90. Claims data is essential to identifying improper claims and payments.

ANSWER: BCBSM admits that claims data can be used to review claims and payments and otherwise denies the allegations contained in Paragraph 90.

91. Throughout the parties' relationship, BCBSM maintained exclusive control and access to Tiara Yachts claims data. Tiara Yachts never had and still does not have access to its own complete claims data. BCBSM's exclusive control and access to its customers' claims data is yet another tool BCBSM utilizes to conceal its misconduct.

ANSWER: BCBSM denies the allegations contained in Paragraph 91.

92. Tiara Yachts' claims data should reflect all information necessary to ascertain whether a claim was properly processed and/or paid. To the extent it does not, BCBSM's failure to collect and/or maintain such data would itself be a breach of fiduciary duty.

ANSWER: The allegations contained in Paragraph 92 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM admits that Tiara Yachts had claims data to ascertain whether claims were properly processed and/or paid and otherwise denies the allegations contained in Paragraph 92.

93. Such data deficiencies may include, for example: missing provider information, missing payee information, rolled-up financials, financials that do not reconcile, claims showing as rejected but still paid, fields compromised by BCBSM's flip logic, or even claims that are altogether missing.

ANSWER: BCBSM denies the allegations contained in Paragraph 93.

94. **Missing Provider Information.** An NPI is a unique government ID number issued to medical professionals and businesses and is required to be used in health care transactions by the Health Insurance Portability and Accountability Act ("HIPAA"). Claims without provider information, such as an NPI, are incapable of being analyzed for

the identification of improper payments. BCBSM requires an NPI on every claim prior to reimbursement. *See, e.g.*, BCBSM Provider Manual¹ (“If NPI is missing or illegible, claim will be rejected.”). It is the responsibility of BCBSM, as the Plan fiduciary, to provide industry standard oversight, such as confirming that the health care service provider is a covered entity as described within the plan document.

ANSWER: The allegations contained in the first and last sentences of Paragraph 94 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 94.

95. **Missing Payee Information.** Claims missing payee information fail to disclose where or to whom plan funds were spent. As the fiduciary, BCBSM was responsible for tracking to whom and where plan assets are distributed.

ANSWER: The allegations contained in Paragraph 95 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 95.

96. **Rolled-Up Financial Details.** Claims should reflect a line-by-line detail of each claim’s associated costs and reimbursements. For example, each item within a claim should have itemized details regarding the amounts billed and paid. A consolidation, or “roll-up”, of a claim’s line-by-line detail makes it impossible to verify whether a claim was properly made and/or paid.

ANSWER: BCBSM denies the allegations contained in Paragraph 96.

97. **Claim Financials Do Not Add Up.** The maximum reimbursement for health care service is determined by the contracted rate applicable to each service billed.

¹ <https://www.bcbsm.com/content/dam/public/Providers/Documents/help/medicare-plus-blueppo-manual.pdf>.

The maximum reimbursement is paid by the Plan after member liability (deductible, co-insurance, and co-pays) has been applied. Thus, the combination of plan paid amount and member liability should represent maximum reimbursement to a network health care provider. When this combination does not reconcile with BCBSM's allowable amount (also called the approved amount), the claim financials do not add up and this raises fiduciary concerns.

ANSWER: The allegations contained in Paragraph 97 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 97.

98. **Rejected Claims that Report as Paid.** Claims that are rejected should be denied with no payable amount. If rejected claims showing a paid amount were in actually paid, these claims are a fiduciary violation and would be considered improper payments.

ANSWER: The allegations contained in Paragraph 98 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 98

99. **Systematic Pricing Failure of Out-of-Network Claims – Flip Logic.** Due to BCBSM's flip logic, many claims may be labeled as in-network in the data and allowed at 100 percent, when in fact they were out-of-network and should have been reduced according to Tiara Yacht's elected Plan benefits.

ANSWER: BCBSM denies the allegations contained in Paragraph 99.

100. **Missing Claims Data.** Tiara Yacht's claims data should reconcile with the financial transactions BCBSM reported to Tiara Yacht's. A gap between the paid amounts in the claims data and financial reports, means that either claims data is missing or Tiara

Yachts was overcharged.

ANSWER: BCBSM denies the allegations contained in Paragraph 100.

101. BCBSM processes all claims for all non-auto NASCO customers, such as Tiara Yachts, on the same claims processing system. Thus, errors or deficiencies identified in claims associated with one customer can reasonably be expected to exist for other customers using the same system.

ANSWER: BCBSM denies the allegations contained in Paragraph 101.

102. BCBSM's NASCO claims processing system has been found to consistently result in improper payments of claims. These processing errors result in wasted Plan assets in breach of BCBSM's fiduciary duty.

ANSWER: The allegations contained in Paragraph 102 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 102.

103. Common errors associated with BCBSM's NASCO claims processing system include, for example: unbundling, upcoding, medically unlikely claims, non-adherence to payment guidelines, and BCBSM's flip logic.

ANSWER: BCBSM denies the allegations contained in Paragraph 103.

104. **Unbundling.** Unbundling is when a health care service provider uses the billing codes for two or more separate procedures when the procedures were actually performed together and only one code should be paid. Within the health care industry, procedure-to-procedure ("PTP") edits are used to identify various types of unbundling. These edits work by defining pairs of Healthcare Common Procedure Coding System ("HCPCS") and Current Procedural Terminology ("CPT") codes that should not be

reported together on a claim for a variety of reasons, such as a provider performing several laboratory tests for a patient that are commonly grouped as a panel and fall under a single billing code. The provider may try to increase their reimbursement by submitting claim codes for each individual test in the panel. The purpose of the PTP edits is to prevent improper payments when incorrect code combinations are reported. As the Plan administrator tasked with responsibility of processing claims, BCBSM should allow and pay unbundled claims.

ANSWER: BCBSM denies the allegations contained in Paragraph 104.

105. **Medically Unlikely Edits (MUE).** An MUE for a code is the maximum units of service that a provider would report under most circumstances for a single patient on a single date of service. In other words, MUEs represent an upper limit that unquestionably requires further documentation to support. These edits are designed to limit fraud and/or coding errors. As the Plan administrator tasked with responsibility of processing claims, BCBSM should not allow and pay claims that exceed the maximum number of units allowed.

ANSWER: BCBSM denies the allegations contained in Paragraph 105.

106. **Upcoding.** Upcoding occurs when health care providers submit inaccurate billing codes to insurance companies in order to receive inflated reimbursements. As the Plan administrator, BCBSM should not allow and pay upcoded claims.

ANSWER: BCBSM denies the allegations contained in Paragraph 106.

107. **Non-Adherence to Payment Guidelines.** Payment guidelines are established to determine the appropriate reimbursement amounts when processing a claim. In general, Payment Guidelines dictate the reimbursement methodology used to determine

the maximum allowable for any given service and provider type. As the Plan administrator, BCBSM must adhere to payment guidelines when processing and paying claims.

ANSWER: BCBSM denies the allegations contained in Paragraph 107.

108. The aforementioned improper payments are non-exclusive examples of improper payments BCBSM regularly makes when processing claims for NASCO customers, and therefore also made when processing claims for Tiara Yachts. This Complaint is intended to cover all further improper payments and misuses of plan assets discovered hereafter once Tiara Yachts has the opportunity to analyze its own complete claims data.

ANSWER: BCBSM denies the allegations contained in Paragraph 108, except lacks knowledge or information sufficient to form a belief as to the intent of the Complaint.

F. BCBSM’S PRACTICE OF KNOWINGLY PAYING IMPROPER CLAIMS IS INCONSISTENT WITH INDUSTRY STANDARDS, INCONSISTENT WITH HOW BCBSM HOLDS ITSELF OUT TO THE PUBLIC, AND INCONSISTENT WITH REPRESENTATIONS IT MAKES TO CUSTOMERS.

95. BCBSM’s practice of paying Providers’ improper claims is contrary to standards and norms in the health insurance industry, contrary to how BCBSM markets itself to the public, and is contrary to representations it makes to customers.

ANSWER: BCBSM denies the allegations contained in Paragraph 95.

96. BCBSM represents that its “claims processing practices consistently deliver industry-leading outcomes with respect to claim payments, and average above 99% accuracy.” Payment Integrity Presentation, **Exhibit F**.

ANSWER: BCBSM respectfully refers the Court to Exhibit F to the Complaint, ECF No. 1-7, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations

contained in Paragraph 96.

97. BCBSM says that it “takes actions to ensure health claims are submitted, and paid accurately, proactively and correctly, by the responsible party, for eligible members, according to medical, benefit and reimbursement policies and contractual term. Not in error or duplicate and free of wasteful or abusive practices.” *Id.*

ANSWER: BCBSM respectfully refers the Court to Exhibit F to the Complaint, ECF No. 1-7, for a complete and accurate description of its contents, without admitting the truth thereof or its admissibility, and otherwise denies any inconsistent allegations contained in Paragraph 97.

98. Indeed, BCBSM charges its customers for its investigation, detection, and recovery of improper claims.

ANSWER: BCBSM denies the allegations contained in Paragraph 98.

99. BCBSM’s practice of knowingly paying improper claims is entirely inconsistent with such representations, and with industry standards.

ANSWER: BCBSM denies the allegations contained in Paragraph 99.

100. Likewise, BCBSM’s payment of claims that lack basic information, such as the provider’s identity and qualifications that is essential to avoiding improper payments, is inconsistent with industry standards and BCBSM’s own policies.

ANSWER: BCBSM denies the allegations contained in Paragraph 100.

101. Tiara Yachts never imagined, nor had reason to imagine based on BCBSM’s own representations, that BCBSM knowingly paid Providers’ improper claims or that BCBSM knew of flaws in its system affecting Tiara Yachts and failed to disclose and correct the issue.

ANSWER: BCBSM denies the allegations contained in Paragraph 101.

102. The limited reporting information BCBSM provided to Tiara Yachts contained no information about BCBSM's practice of paying Providers' improper claims or its flawed systems.

ANSWER: BCBSM denies the allegations contained in Paragraph 102.

103. Based on BCBSM's own representations – that BCBSM is as an industry expert in fraud prevention – and the fact that information BCBSM provided Tiara Yachts contained no information about its practice of paying Providers' improper claims, Tiara Yachts trusted and believed that BCBSM was acting in Tiara Yachts' best interest. As explained above, Tiara Yachts was wrong.

ANSWER: BCBSM denies the allegations contained in Paragraph 103.

104. BCBSM, as a fiduciary to Tiara Yachts, had a duty to disclose all material facts related to its claims processing, including all Plan assets that had been mismanaged. BCBSM failed to do so.

ANSWER: The allegations contained in Paragraph 104 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 104.

COUNT I
Breach of Fiduciary Duty - ERISA

105. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs.

ANSWER: BCBSM incorporates by reference its responses to the preceding Paragraphs.

106. At all times relevant, BCBSM was a fiduciary pursuant to 29 U.S.C. §

1002(21)(A) with respect to Tiara Yachts' Plan because (a) it exercised discretionary authority and control over management of the Plan; (b) it exercised authority and control over management and disposition of the Plan's assets; or (c) it had discretionary authority and responsibility in the administration of the Plan.

ANSWER: The allegations contained in Paragraph 106 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 106.

107. As a fiduciary, BCBSM was required, among other things, to discharge its duties solely in the interest of the employees and beneficiaries of the Plan, preserve Plan assets, fully disclose its actions, avoid making false or misleading statements, avoid conflicts of interest, and abide by any statutory obligations or restrictions imposed on it. BCBSM also held a duty to act in accordance with the documents and instruments governing the Plan.

ANSWER: The allegations contained in Paragraph 107 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 107.

108. BCBSM breached its fiduciary duties in numerous ways, including, but not limited to:

- (a) Knowingly using Tiara Yachts' Plan assets to pay claims impacted by BCBSM's systems flip logic, fully aware such flip logic had been flawed for decades and was causing Tiara Yachts' Plan to overpay for benefits;
- (b) Failing to implement or correct controls in its systems logic that would flag suspicious claim activity, when BCBSM knew that its systems logic

was flawed and causing claims to be processed at charges in contradiction with Tiara Yachts' elected Plan benefits;

(c) Concealing from, and otherwise failing to disclose to Tiara Yachts, the full implications of and flaws associated with its systems logic and the overpayments BCBSM made as a result;

(d) Misleading and deceiving Tiara Yachts by implementing a Shared Savings Program when it knew Tiara Yachts' Plan assets were being used to overpay for benefits, allowing BCBSM to capitalize on its own misconduct and mismanagement, which was a clear conflict of interest;

(e) Using its considerable discretionary authority to advance interests other than those of Tiara Yachts' Plan or its members;

(f) Failing to implement and exercise sufficient quality control and oversight of BCBSM's claims processing systems and discretionary review of claims pre- and post- payment;

(g) Consistently paying claims suffering from a range of coding and billing issues, including but not limited to unbundling, upcoding, medically unlikely services, and reimbursing claims in non-adherence to its own and/or industry standard reimbursement guidelines;

(h) Failing to implement industry standard claims processing edits to prevent Tiara Yachts' Plan assets from being used to pay improper charges;

(i) Concealing from, and otherwise failing to disclose to Tiara Yachts the payment of improper claims;

(j) Concealing from, and otherwise failing to disclose to Tiara

Yachts all documents and information that govern BCBSM's methodology for determining covered charges under Tiara Yachts' Plan and amounts to be paid to providers, affording BCBSM complete discretionary control and preventing Tiara Yachts from verifying whether reimbursements made by BCBSM using its Plan assets were calculated and made in accordance with the Plan's terms, operative pricing rates, rules, policies, and contracts;

(k) Paying claims lacking standard information necessary to properly adjudicate claims in accordance with industry standards and BCBSM's own policies and procedures, or otherwise failing to maintain claims data necessary to identify and recover incorrectly paid amounts and identify the full scope of BCBSM's misconduct and mismanagement;

(l) Failing to exercise the care, skill, prudence, and diligence under the circumstances that a prudent fiduciary acting in a like capacity and familiar with such matters would use in paying for health care claims, and otherwise administering Tiara Yachts' ERISA-governed Plan.

ANSWER: The allegations contained in Paragraph 108 and its subparts purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 108 and its subparts.

109. BCBSM's breach of its fiduciary duty has proximately caused substantial damages to Tiara Yachts.

ANSWER: The allegations contained in Paragraph 109 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise

required, BCBSM denies the allegations contained in Paragraph 109.

COUNT II
Engaging in Prohibited Transactions

110. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs.

ANSWER: BCBSM incorporates by reference its responses to the preceding Paragraphs.

111. At all times relevant, and with respect to the actions described above, BCBSM was an ERISA fiduciary. Therefore, under 29 U.S.C. § 1106, BCBSM was prohibited from dealing with the assets of Tiara Yachts' Plan in its own interest or for its own account.

ANSWER: The allegations contained in Paragraph 111 purport to state legal conclusions to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 111.

112. As described above, BCBSM instituted a mandatory Shared Savings Program whereby it was paid 30 percent of certain recoveries.

ANSWER: BCBSM denies the allegations contained in Paragraph 112.

113. Whether Tiara Yachts agreed to pay 30 percent is immaterial, because the amount of the "recoveries" were in the unilateral control of BCBSM.

ANSWER: BCBSM denies the allegations contained in Paragraph 113.

114. The more improper claims that BCBSM failed to detect on the front end, the higher the recoveries on the back end, and the more it got paid.

ANSWER: BCBSM denies the allegations contained in Paragraph 114.

115. By instituting a system that allowed it to unilaterally control the amount of

its own compensation, BCBSM dealt with Tiara Yachts' Plan assets in its own interest and for its own account in violation of Section 1106.

ANSWER: The allegations contained in Paragraph 115 purport to state a legal conclusion to which no response is required. To the extent a response is otherwise required, BCBSM denies the allegations contained in Paragraph 115.

AFFIRMATIVE AND OTHER DEFENSES

Without admitting any wrongful conduct on its part and without conceding that it has the burden of proof on any of the following defenses, BCBSM asserts the following affirmative and other defenses to the Complaint:

First Affirmative Defense

Plaintiff's claims for relief are barred, in whole or in part, because they fail to state a cause of action against BCBSM.

In support of this affirmative defense, BCBSM states:

1. Plaintiff's Complaint fails to allege a cognizable claim for breach of fiduciary duty because Plaintiff fails to plead any facts alleging that BCBSM breached any duties to Plaintiff.

2. Plaintiff alleges that "BCBSM's NASCO claims processing system has been found to consistently result in improper payment of claims," and that "[t]hese processing errors resulted in wasted Plan assets in breach of BCBSM's fiduciary duty." *See* ECF No. 1, PageID.15 ¶ 102. Plaintiff further alleges that "[c]ommon errors associated with BCBSM's NASCO claims processing system include, for example: unbundling, upcoding, medically unlikely claims, non-adherence to payment guidelines, and BCBSM's flip logic." *See id.* ¶ 103.

3. The Complaint describes each of these "[c]ommon errors" and

then describes what BCBSM should and should not do with respect to each of these “common errors.” *See id.*, PageID.14-15 ¶ 103-08² (“BCBSM should not allow and pay claims that exceed the maximum number of units allowed;” “BCBSM should not allow and pay upcoded claims;” “BCBSM must adhere to payment guidelines when processing and paying claims”). But Plaintiff fails to allege any facts supporting its allegation that BCBSM failed to adhere to any of these “common error” practices with respect to the Plan. *Id.*, PageID.14 ¶ 103. Statements of what BCBSM “should” and “should not” do, without more, are insufficient to establish a breach of fiduciary duty. *Id.*, PageID.16 ¶ 108.

4. Even if Plaintiff alleged that BCBSM failed to adhere to the “common error” practices, Plaintiff fails to allege that any failure was made with respect to any claims from the Plan or that any improper payments were made using funds from Plaintiff’s plan. *Id.*, PageID.14 ¶ 103. Instead, Plaintiff concedes that these “improper payments are non-exclusive examples of improper payments BCBSM regularly makes when processing claims for NASCO customers” and then states, without any factual support that “therefore” BCBSM also made these same errors with respect to Plaintiff’s Plan’s claims. *Id.*, PageID.16 ¶ 108. Because Plaintiff fails to allege any improper payments were made using funds from Plaintiff’s Plan, the Complaint fails to state a claim.

5. Additionally, the Complaint fails to acknowledge that the Plan specifically authorized BCBSM to pay the full amount charged by a non-participating provider and that paying a provider’s bill in full in the first instance

² Complaint Paragraph 104 presumably contains a typographical error, as it states that “BCBSM should allow and pay unbundled claims.” *See* ECF No. 1, PageID.16 ¶ 104.

ensures that the provider will not look to the Plan participant for payment of any amounts not paid by the Plan.

6. The Complaint similarly fails to plead any allegations that BCBSM failed to properly maintain client data; nor does the Complaint allege that BCBSM failed to maintain Plaintiff's Plan's data. Instead, the Complaint merely alleges that "Tiara Yachts' claims data *should* reflect all information necessary to ascertain whether a claim was properly processed and/or paid. *To the extent it does not*, BCBSM's failure to collect and/or maintain such data would itself be a breach of fiduciary duty." ECF No. 1, PageID.13 ¶ 92 (emphasis added). Any supposed breach with respect to Plaintiff's plan is nothing more than speculation.

Second Affirmative Defense

Plaintiff's claims for relief are barred, in whole or in part, by the applicable statutes of limitation or repose and/or the doctrines of laches, estoppel, and waiver.

In support of this affirmative defense, BCBSM states:

1. A three-year statute of limitations applies to Plaintiff's claims.
2. Plaintiff and BCBSM renewed their ASC each year. *See, e.g.*, ECF No. 12-2.
3. Schedule B to the ASC specifically permitted BCBSM to reimburse non-participating providers for the full amount charged so that the provider does not seek any differences from the individual beneficiaries directly.
4. In December 2017, Schedule A to the parties' ASC referred to the upcoming implementation of the Shared Savings Program. *See* ECF No. 12-5, PageID.161.
5. By signing this Schedule A, Plaintiff expressly acknowledged

that BCBSM would “retain as administrative compensation 30% of the recoveries or cost avoidance” relating to pre-payment forensic billing review, advanced payment analytics, subrogation, and provider credit balance recovery. *Id.*, PageID.161.

6. Through Schedule A, Plaintiff had actual knowledge that BCBSM would receive 30% of the fees recovered through the Shared Savings Program.

7. Plaintiff terminated the ASC in December 2018 and did not file this lawsuit until more than three years later, in July 2022. Accordingly, none of the alleged activities with respect to claims reimbursement and Shared Savings Program recoveries could have happened within three years of filing the lawsuit.

8. Plaintiff knew that claims submitted by non-participating providers were paid in full.

9. Plaintiff knew of the Shared Savings Program since December 2017, more than three years before filing this lawsuit.

10. Moreover, Plaintiff had actual knowledge of the details of each payment shortly after the payment was made because Plaintiff was provided payment details on a monthly basis.

11. Plaintiff had knowledge of the details surrounding the payments made and had all relevant facts needed to determine whether the claims were paid out according to the terms of its Plan.

12. Moreover, under ERISA’s six-year statute of repose, Plaintiff cannot recover damages arising from any overpayments made before July 1, 2016

(six years before the Complaint was filed). Accordingly, any claims arising from overpayments made before July 1, 2016, are time-barred regardless of notice or knowledge.

Third Affirmative Defense

Plaintiff's claims for relief are barred, in whole or in part, because they fail to state a cause of action against BCBSM because the Shared Savings Program recovery fee constituted "reasonable compensation" for the services BCBSM provided under Section 408(b)(2) of ERISA.

Fourth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, to the extent those claims were waived and/or released by prior settlement agreements and/or release agreements between the parties.

In support of this affirmative defense, BCBSM states:

1. The ASC contains a settlement provision, as part of which BCBSM would prepare a final settlement that refunded any positive balance back to Plaintiff upon notice of termination and expiration of a Transition Assistance Period. ECF No. 12-2, PageID.149-150 Art. IV § B.

2. The parties expressly agreed in the ASC that this final settlement payment would "fully and finally settle, release, and discharge each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported, adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other forms of money due and owing between the parties and arising under" the ASC. *Id.*, PageID.150 Art. IV § B.6.

3. In April 2021, BCBSM and Plaintiff agreed to a settlement

refund, and BCBSM issued a final settlement to Plaintiff. **Exhibit A.**

4. By signing the ASC refund summary, Plaintiff expressly agreed that the refund “fully and finally settles, releases and discharges each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported (IBNR), adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other sums of money due and owing between the parties and arising under” the ASC. **Exhibit A.**

5. In furtherance of this agreement and in exchange for releasing its claims, Plaintiff accepted \$52,950.

6. Plaintiff’s claims arise under the ASC because they concern BCBSM’s processing of claims and operation of the Shared Savings Program, activities that BCBSM undertook under the ASC.

7. Plaintiff has not returned the \$52,950 to BCBSM.

8. Accordingly, Plaintiff’s claims against BCBSM are barred by the ASC release.

Fifth Affirmative Defense

Plaintiff’s claims are barred, in whole or in part, for failure to comply with the dispute resolution provision of the parties’ ASC.

In support of this affirmative defense, BCBSM states:

1. The ASC contains a clear and unambiguous dispute resolution provision. *See* ECF No. 12-2, PageID.142 Art. II § D, “Disputed Claims.” Paragraph D states: “Group shall notify BCBSM in writing of any Claim that Group disputes within 60 days of Group’s access to a paid Claims listing.”

2. Accordingly, to the extent Plaintiff believed that BCBSM

inaccurately paid out a claim or paid too much for any particular claim, it was required to notify BCBSM in writing within 60 days.

3. Plaintiff failed to comply with Paragraph D. Plaintiff, therefore, waived its right to dispute any particular claim under the terms of the parties' ASC.

Sixth Affirmative Defense

Plaintiff's claims for relief are barred, in whole or in part, because Plaintiff and the Plan suffered no injury in fact as a result of any acts of, or failures to act by, BCBSM.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because the alleged damages, if any (which BCBSM expressly denies), are remote, speculative, and uncertain.

Eighth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because the alleged injury, if any (which BCBSM expressly denies), was indirect and not actually or proximately caused by BCBSM.

Ninth Affirmative Defense

Plaintiff's claims are barred because the injuries alleged, to the extent any exist, were caused, in whole or in part, by intervening and/or superseding causes unrelated to the alleged conduct of BCBSM, by the conduct of third parties for whom BCBSM was not responsible, or through forces in the marketplace over which BCBSM has no control.

Tenth Affirmative Defense

Plaintiff's claims are barred because the injuries alleged, to the extent any exist, were caused, in whole or in part, by acts or omissions by Plaintiff.

In support of this affirmative defense, BCBSM states:

1. Under Article V § B of the ASC, Tiara Yachts agreed to “hold BCBSM harmless from any claims resulting from [Tiara Yachts’s] breach of any term of” the ASC “and/or breach of any obligation or duty not expressly delegated to BCBSM in” the ASC “including, but not limited to” Tiara Yachts “obligation...to read and understand the terms of this Contract.” ECF No. 12-2, PageID.150.

2. On information and belief, Tiara Yachts did not review claims data provided by BCBSM as it was received.

3. Tiara Yachts never requested an audit or to review any claims data.

4. Tiara Yachts consented to the implementation of the Shared Savings Program.

5. To the extent Tiara Yachts now claims it did not understand the Shared Savings Program or otherwise failed to understand the import of the terms of the ASC, then it is required under the ASC to hold BCBSM harmless from any recovery by the Plan, if any.

Eleventh Affirmative Defense

Recovery on the claims for relief is barred, in whole or in part, by Plaintiff’s failure to mitigate the alleged damages, if any.

Twelfth Affirmative Defense

Plaintiff is not entitled to injunctive or equitable relief as there is an adequate remedy at law.

Thirteenth Affirmative Defense

Plaintiff is not entitled to equitable relief because of laches.

Fourteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of merger, bar, discharge, accord and satisfaction, res judicata, collateral estoppel, laches, waiver, general estoppel, ratification, acquiescence, contribution, indemnity, unclean hands, and/or *in pari delicto*.

Fifteenth Affirmative Defense

Plaintiff's claim for restitution is barred, in whole or in part, because BCBSM is not in possession of funds in which Plaintiff has an ownership interest.

Sixteenth Affirmative Defense

Plaintiff's claim for disgorgement is barred, in whole or in part, to the extent Plaintiff seeks disgorgement beyond restitution.

Seventeenth Affirmative Defense

Plaintiff's claims are barred, and any rights to relief are subject to setoff, because of BCBSM's counterclaims.

WHEREFORE, BCBSM respectfully seeks judgment as follows:

- A. That Plaintiff takes nothing by virtue of the Complaint;
- B. That Plaintiff's claims against BCBSM are dismissed in their entirety with prejudice;
- C. That BCBSM be awarded the costs of defending this action, including reasonable attorneys' fees, costs and disbursements, and
- D. For such other and further relief as this Court may deem just and proper.

Dated: September 9, 2025

Respectfully submitted,

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Attorneys for Defendant

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

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendant.

Civil Action No.: 1:22-cv-603

Judge: Hon. Robert J. Jonker

Magistrate Judge: Ray Kent

**DEFENDANT BLUE CROSS BLUE SHIELD OF MICHIGAN’S
COUNTERCLAIMS AGAINST TIARA YACHTS**

Count I

Co-Fiduciary Liability under ERISA

1. Tiara Yachts was the Plan Sponsor and Administrator of its self-funded health benefits plan (the “Plan”).

2. Tiara Yachts and Blue Cross Blue Shield of Michigan (“BCBSM”) entered into an Administrative Services Contract (the “ASC”) in January 2006. ECF No. 12-2.

3. Under the ASC, Tiara Yachts delegated to BCBSM the responsibility and authority to make final benefit determinations. Tiara Yachts “retain[ed] all other fiduciary responsibilities and duties under ERISA not specifically delegated to BCBSM” under the ASC. *Id.*, PageID.141 Art. II § A.

4. BCBSM provided Tiara Yachts with access to claims data for the claims that BCBSM processed each month.

5. The ASC provided Tiara Yachts with the right to dispute any claim within 60 days of receiving access to a paid claims listing. *Id.*, PageID.142 Art. II § D.

6. The ASC also provided Tiara Yachts with the right to audit claims incurred

under the ASC. *Id.*, PageID.144 Art. II § G.

7. Each year, Tiara Yachts signed a pricing addendum to the ASC, a Schedule A, that renewed and amended the ASC.

8. When individual beneficiaries enrolled in the Plan sought care from non-participating providers outside the territory that BCBSM serves, there was no negotiated rate.

9. This means that the individual beneficiary—i.e., the patient—may receive a bill from that provider for the balance of the amount that is not covered by the Plan.

10. To protect such individual beneficiaries from this “balance billing,” the ASC specifically permitted BCBSM to reimburse the non-participating provider for the full amount charged so that the provider would not seek any differences from the individual beneficiaries directly.

11. Tiara Yachts expressly agreed to and did not dispute the policy of paying the full amount charged by a non-participating provider for the full amount charged by a provider.

12. In December 2017, Tiara Yachts signed a Schedule A that announced BCBSM’s implementation of its Shared Savings Program (“SSP”). ECF No. 12-5. This Schedule A stated that BCBSM was implementing the SSP “to enhance the savings realized by its customers through additional pre-payment and post-payment recovery efforts.” *Id.*, PageID.161.

13. By signing this Schedule A, Tiara Yachts expressly acknowledged that BCBSM would “retain as administrative compensation 30% of the recoveries or cost avoidance” relating to pre-payment forensic billing review, advanced payment analytics,

subrogation, and provider credit balance recovery. *Id.*, PageID.161.

14. Tiara Yachts did not dispute the implementation, validity, or intent of the SSP, either upon its introduction or throughout its application to BCBSM's processing of claims.

15. During its relationship with BCBSM, Tiara Yachts never exercised any of its audit rights under the ASC.

16. At all relevant times, Tiara Yachts was a Plan fiduciary under ERISA 29 U.S.C. § 1002(21) because it was the Plan Sponsor.

17. Tiara Yachts owed fiduciary duties to the Plan in transactions with Plan assets and in engaging and monitoring third parties to provide services to the Plan.

18. Tiara Yachts had fiduciary duties under ERISA to exercise care, skill, prudence, and diligence exclusively in the best interests of the Plan when it negotiated, executed, and monitored its contractual relationship with BCBSM. These duties included the duty to take reasonable steps to monitor BCBSM's processing of claims to ensure proper treatment under ERISA.

19. At all relevant times as a Plan fiduciary, Tiara Yachts knew that BCBSM paid non-participating providers at the full amount of the amount charged.

20. At all relevant times as a Plan fiduciary, Tiara Yachts knew that BCBSM received 30% of fees recovered through the SSP.

21. At all relevant times as a Plan fiduciary, Tiara Yachts had access to claims data on a periodic basis.

22. If the Court concludes that BCBSM breached its fiduciary duties through its processing of claims for the Plan and its implementation of the SSP, BCBSM is entitled

to contribution from Tiara Yachts under ERISA and federal ERISA common law for any harm to the Plan because Tiara Yachts failed to exercise care, skill, prudence, and diligence in its oversight of BCBSM and otherwise in connection with its provision of services under the ASC.

WHEREFORE, to the extent that a judgment is entered against BCBSM for processing claims or collecting SSP recoveries in violation of ERISA, BCBSM respectfully requests that the Court enter judgment against Tiara Yachts to equitably apportion any recovery to which the Plan is entitled, if any, between Tiara Yachts and BCBSM.

Count II

Indemnification

23. BCBSM incorporates by reference Paragraphs 1 – 22.

24. Under Article V § B of the ASC, Tiara Yachts agreed to “indemnify, defend and hold BCBSM harmless from any claims resulting from [Tiara Yachts’s] breach of any term of [the ASC] and/or breach of any obligation or duty not expressly delegated to BCBSM in [the ASC], including, but not limited to, [Tiara Yachts’s] obligation . . . to read and understand the terms of this Contract.” ECF No. 12-2, PageID.150.

25. This indemnification provision expressly survived termination of the ASC.

26. Tiara Yachts is obligated to “indemnify” BCBSM to the extent the claims against BCBSM are a result of Tiara Yachts not understanding the terms of the ASC, including with respect to the payment of amounts charged by non-participating providers and the SSP.

27. Tiara Yachts further is obligated to indemnify BCBSM to the extent the alleged losses are a result of its own breaches of the ASC, including, for example, its obligation pursuant to Article II § D of the ASC, ECF No. 12-2, PageID.142, to “notify

BCBSM in writing of any Claim that [Tiara Yachts] disputes within 60 days of [its] access to a paid Claims listing.”

28. On information and belief, Tiara Yachts did not review claims data provided by BCBSM as it was provided.

29. Tiara Yachts never exercised its audit rights to review claims data.

30. Moreover, to the extent Tiara Yachts now claims it did not understand the SSP or otherwise failed to understand the import of the terms of the ASC, then it is required under the ASC to hold BCBSM harmless from any recovery by the Plan, if any.

WHEREFORE, BCBSM respectfully requests that the Court enter judgment against Tiara Yachts requiring it to indemnify BCBSM for and hold BCBSM harmless from the claims brought in the Complaint, including payment of its attorneys’ fees and any recovery to which the Plan is entitled, if any.

Count III

Breach of ASC Release

31. BCBSM incorporates by reference Paragraphs 1 – 30.

32. Tiara Yachts and BCBSM terminated their relationship in December 2018.

33. Under the ASC, upon notice of termination and expiration of a Transition Assistance Period, BCBSM would prepare a final settlement that refunded any positive balance to Tiara Yachts. ECF No. 12-2, PageID.149-150 Art. IV § B.

34. The parties expressly agreed in the ASC that this final settlement payment would “fully and finally settle, release, and discharge each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported, adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other forms of money due and owing between the parties and arising under” the ASC. *Id.*,

PageID.150 Art. IV § B.6.

35. Under that provision of the ASC, in April 2021, BCBSM issued a final settlement and refund in the amount of \$52,950 to Tiara Yachts (the “Settlement Refund”).

36. By signing the ASC refund summary, Tiara Yachts agreed that the Settlement Refund “fully and finally settles, releases and discharges each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported (IBNR), adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other sums of money due and owing between the parties and arising under” the ASC. **Exhibit A.**

37. In furtherance of this agreement and in exchange for its release of any such claims, Tiara Yachts accepted the Settlement Refund.

38. The ASC constituted a valid and enforceable contract between BCBSM and Tiara Yachts.

39. On account of the Settlement Refund, BCBSM fully performed its obligations under Article IV Section B.6 of the ASC with respect to the final settlement of claims.

40. Tiara Yachts’ claims of breaches of fiduciary duty and prohibited transactions arise under the ASC because they are based on BCBSM’s processing of claims and the SSP.

41. The release under Article IV Section B.6 of the ASC therefore extends to Tiara Yachts’ claims against BCBSM.

42. By bringing these claims, Tiara Yachts breached the terms of the valid and enforceable release under the ASC and caused BCBSM to incur unnecessary and avoidable

costs, expenses, and other harms.

WHEREFORE, BCBSM respectfully requests that the Court declare as valid and enforceable the release between BCBSM and Tiara Yachts and dismiss the claims against BCBSM.

Dated: September 9, 2025

Respectfully submitted,

ALLEN OVERY SHEARMAN STERLING US LLP

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Attorneys for Defendant

Exhibit A

BLUE CROSS BLUE SHIELD OF MICHIGAN

Authorization Agreement for direct deposits (ACH credits)

This form is used to initiate Electronic Funds Transfers for the specified supplier. Please complete all fields; put N/A if not applicable.

A separate document such as a supplier invoice with banking information, a signed supplier letterhead with banking information, or a voided check with banking information must be provided as a validation of the banking information as listed on this BCBSM EFT form. A W-9 is also required to accompany ACH Authorization form.

This request is only for Standard EFT/ACH transfers and is not applicable for wire request. Please verify routing, transit and account numbers with your financial institution to ensure accurate posting of funds. **Note:** Bank routing, transit and account numbers may vary from those that appear on your deposit or withdrawal slips.

Section I: Company Information:

Company Name (Legal): Tiara Yachts, Inc.
Street Address: 725 East 40th Street
City: Holland State: MI Zip Code: 49423 TIN/SSN: [REDACTED]
Contact Name: Kim Scott Contact Title: Sr. Financial Analyst
Contact Phone Number: (616) 394-7465 Contact Email: Kscott@tiara-yachts.com
Valid email address for payment notification (REQUIRED)

Section II: Bank Information:

Bank Name: [REDACTED] Bank Routing: [REDACTED]
Bank Account #: [REDACTED] Check or Savings: [REDACTED]
☒ BCBSM is unable to process international ACH transactions. By checking this box, you are stating that your ACH instructions are US only.

Section III: Authorized Signature Approval:

Print Name and Title of Company Officer: Ed Walsh Vice President Finance
(Note: Account manager or above)
Phone Number: 616-394-5651 Email: ewalsh@t2yachts.com
Signature of Company Officer: [Signature] Date: 4/16/21

The above signature acknowledges acceptance of the following: BCBSM and/or its subsidiaries are authorized to make deposits into the account at the bank identified above. Both parties agree to be bound by the Operating Rules of the National Automated Clearinghouse Association (NACHA) for ACH transactions. This authorization is to remain in effect until written notice of termination is given to BCBSM by the supplier.

Return completed form to:

Blue Cross Blue Shield of MI
Attn: Accounts Payable
600 E. Lafayette, Mail Code 1011
Detroit, Michigan 48226 OR
Email to: bcbsmaccountspayable@bcbsm.com
OR Fax to: 866-738-0238

Accounts Payable Department at Blue Cross Blue Shield of Michigan has implemented a new control for bank transfers. Employees in that department will call the executive listed at the receiving entity prior to initiating that transfer. After confirming the banking information provided, the funds may be transferred.

Please provide the following:

Entity/Vendor Name:	Tiara Yachts, Inc
Name of entity CFO or authorized person:	Ed Walsh
Title of person, if not CFO:	CFO
Contact phone or email address:	616-394-5657

This mutual final settlement is made among BCBSM, Group and the group health plan and fully and finally settles, releases and discharges each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported (IBNR), adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other sums of money due and owing between the parties and arising under the administrative services contract and arrangement.

BCBSM

08-Apr-2021

Whitney Briggs
Whitney Briggs W. Mich Sales

Date 4/16/21



Blue Cross
Blue Shield
Blue Care Network
of Michigan

Nonprofit corporations and independent licensees
of the Blue Cross and Blue Shield Association

S2 Yachts

Sign Ed Walsh

Print Ed Walsh

Title Vice president Finance

Date 4/16/21

**Blue Cross and Blue Sheild of Michigan
ASC Refund Summary**



A nonprofit corporation and independent licensee
of the Blue Cross and Blue Shield Association

Group: S2 Yachts
Group #: 275980

Explanation for Credit:

Ending ASC Balance as of June 30, 2020	(\$28,000)
Claims and Claims Adjustments	\$1,985
Prescription Drug Rebates	(\$23,326)
Balance held through December 31, 2020	(\$49,341)
Estimated Outstanding Liability	\$0
Refund Check Amount	(\$52,950)
Amount Due	\$52,950