UNITED STATES DISTRICT COURT
FOR THE 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 **Oral Argument Requested**

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A CLAIM

Defendant Blue Cross Blue Shield of Michigan ("BCBSM"), through its undersigned counsel, hereby moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff's Complaint (ECF No. 1). BCBSM respectfully requests that the Court grant this Motion for the reasons set forth in the accompanying brief.

Pursuant to L. Civ. R. 7.1(d), BCBSM's counsel, Mark J. Zausmer, in good faith sought concurrence in the relief requested in this motion from Plaintiff Tiara Yachts' counsel, Perrin Rynders, via email on July 7, 2025. Tiara Yachts' counsel does not concur in the relief requested.

Dated: July 7, 2025

Respectfully submitted,

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INTRODUCTION

In 2006, Blue Cross Blue Shield of Michigan ("BCBSM") and Plaintiff Tiara Yachts, Inc. entered into an Administrative Services Contract ("ASC") under which BCBSM processed claims submitted by health care providers for services rendered to Plaintiff's self-insured employee benefit healthcare plan (the "Plan"). Plaintiff terminated this arrangement in December 2018. Yet more than three years later, Plaintiff brought ERISA claims alleging that BCBSM breached its fiduciary duties and engaged in prohibited transactions.

This Court dismissed those claims for failure to plausibly allege fiduciary status and because ERISA could not provide the remedies sought. The Sixth Circuit reversed on fiduciary status and relief. But neither the Sixth Circuit nor this Court previously addressed other compelling grounds for dismissal. The Complaint fails to state a claim and remains subject to dismissal under Federal Rule of Civil Procedure 12(b)(6) for two reasons.

First, the Complaint fails to allege facts that—even if proven—would constitute a breach of fiduciary duty or prohibited transaction. The Complaint does not even allege that BCBSM overpaid claims under the Plan or profited from any purported overpayments through its Shared Savings Program. It identifies no specific overpayment made on Plaintiff's behalf, no instance of withheld data, and no fees that BCBSM allegedly retained. Such speculative, generalized accusations do not satisfy the required pleading standards. Likewise, the Complaint alleges there were claims processing errors—albeit not with respect to the Plan—but processing errors cannot form the basis of a breach of fiduciary duty claim. Further, the Complaint does not plead facts showing any requisite standard of care for claims processing, much less that BCBSM did not meet that standard.

Second, the claims are time-barred. Plaintiff received monthly invoices and other data demonstrating precisely how claims were processed. If there was a legitimate dispute about

overpayments, Plaintiff could have raised it years ago. Having waited beyond the limitations (and in some cases repose) periods, Plaintiff's claims now fail as a matter of law.

BCBSM thus respectfully submits that the Court should dismiss this case in its entirety.

BACKGROUND

I. The Complaint

Plaintiff sponsors the Plan, a self-insured employee benefit healthcare plan. ECF No. 1, PageID.1 ¶ 1. Plaintiff allegedly contracted with BCBSM to serve as the claims administrator for the Plan.[1] *Id* at Page.ID.3 ¶¶ 15, 17–18. To memorialize BCBSM's role, the parties signed a series of ASC agreements, beginning in 2006. *Id.* at PageID.3 ¶ 17; *see* ECF No. 12-2. The ASC was renewed annually until it was terminated in December 2018. ECF No. 1, PageID.3 ¶ 17.

Plaintiff alleges that BCBSM improperly processed claims, which allegedly resulted in the Plan overpaying fees to healthcare providers. *See id.* at PageID.15-16 ¶¶ 101–08. According to Plaintiff, this either resulted from an "intentional" "systems flaw" called "flip logic" or was a result of "common" processing errors. *See id.* at PageID.6-7, 15 ¶¶ 37–50, 102–03. The Complaint is devoid of any specific allegations with respect to the Plan. Instead, with respect to "flip logic," the Complaint alleges only that "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 system flaw." *Id.* at PageID.7 ¶ 46 (citing ECF No. 1-2). And, with respect to the alleged processing errors, the Complaint alleges only that "errors or deficiencies identified in claims associated with one customer can reasonably be expected to exist for other customers using the same system." *Id.* at PageID.15 ¶ 101.

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[1] In accordance with the standard of review for a motion to dismiss, and for purposes of this motion only, BCBSM accepts the allegations in Plaintiff's Complaint as true. But BCBSM does not concede the accuracy of any such allegations and specifically reserves its rights to contest the truth of any allegations.

Plaintiff further alleges *possible* data deficiencies that *could be* present in Plaintiff's claims data maintained by BCBSM, but without alleging any actual deficiencies. Specifically, Plaintiff claims that its "claims data *should* reflect all information necessary to ascertain whether a claim was properly processed and/or paid" and that, "*[t]o the extent it does not*, BCBSM's failure to collect and/or maintain such data would itself be a breach of fiduciary duty." *See id.* at PageID.13 ¶ 92 (emphasis added).

Finally, Plaintiff alleges that BCBSM engaged in prohibited transactions under ERISA and breached its fiduciary duties through a "Shared Savings Program." *See id.* at PageID.9-12 ¶¶ 70–85. The Shared Savings Program is a group health plan cost-savings program in which BCBSM contracted with and oversaw third-party vendors that adopted measures, including new technologies, for preventing or clawing back overpayments to healthcare providers due to billing errors. ECF No. 1-6, PageID.52-54. BCBSM's customers were auto-enrolled in the Shared Savings Program, but self-insured customers like Plaintiff were able to opt-out. *Id.* at PageID.53.

To cover the costs of these services, BCBSM used a "shared savings" model. ECF No. 1, PageID.10 ¶ 73; ECF No. 1-6, PageID.52. That is, if BCBSM prevented or recovered an overpayment, BCBSM retained 30% of the amount saved. ECF No. 1, PageID.11 ¶ 80; ECF No. 1-6, PageID.57. If no amount was saved, however, no fee was charged to the customer. ECF No. 1-6, PageID.57. The terms of the Shared Savings Program, including the shared savings model, were disclosed in the parties' ASC. *See* ECF No. 12-4, PageID.158 ¶ 1 ("On and after the effective date of the new Shared Savings Program . . . BCBSM will retain as administrative compensation a percentage of all funds recovered through subrogation efforts as

set forth in Schedule A."); ECF No. 12-5, PageID.161 ¶ 17 ("BCBSM will retain as administrative compensation 30% of the recoveries or cost avoidance[.]").

Plaintiff alleges that the Shared Savings Program was a "scheme" specifically "devised" so that BCBSM could "profit" from purposely overpaying claims to providers. ECF No. 1, PageID.11-12 ¶¶ 84, 86. But the Complaint fails to allege that BCBSM in fact recovered any overpayments on behalf of the Plan under the Shared Savings Program or received compensation under the Shared Savings Program with respect to the Plan.

Based on these allegations, Plaintiff asserts two causes of action. First, BCBSM allegedly breached its fiduciary duties to the Plan under ERISA. *Id*. at PageID.18-20 ¶¶ 105–09. Second, BCBSM allegedly engaged in prohibited transactions in violation of 29 U.S.C. § 1106. *Id*. at PageID.21 ¶¶ 110–15.

II. The Litigation

Plaintiff filed the Complaint on July 1, 2022. *See* ECF No. 1. BCBSM moved to dismiss the Complaint on August 25, 2022. *See* ECF No. 12. BCBSM argued that: (1) BCBSM was not a fiduciary under ERISA; (2) Plaintiff failed to state a claim; and (3) Plaintiff's claims were barred by ERISA's statutes of limitation and repose. *Id.* Many of the overpayment allegations in the Complaint are based on allegations by Dennis Wegner, a former BCBSM employee, who filed a whistleblower claim on February 5, 2019. ECF No. 1, PageID.9 ¶ 65. This Court granted BCBSM's motion to dismiss, finding that BCBSM was not a fiduciary under ERISA and that Plaintiff was not entitled to relief under ERISA as sought in the Complaint. *See* ECF No. 23. This Court did not reach BCBSM's other arguments. *Id.*

Plaintiff appealed. *See* ECF No. 49. The Sixth Circuit held, among other things, that the Complaint "plausibly alleged that BCBSM controlled the disposition of Plan assets when it was overpaying claims to medical providers" and thus "that BCBSM was acting as an ERISA

fiduciary" with respect to payment of claims. *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Mich.*, 138 F.4th 457, 466 (6th Cir. 2025). The Sixth Circuit also held that the Complaint plausibly alleged that "BCBSM acted as an ERISA fiduciary by exercising discretion over its own compensation for the SSP," *id*. at 470, but did not address BCBSM's other arguments for dismissal, which were not briefed on appeal, *id.* at 463 n.3.

LEGAL STANDARD

The motion to dismiss for failure to state a claim is "one important mechanism for weeding out meritless [ERISA] claims." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). "[A] complaint does [not] suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). This "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation" or mere "labels and conclusions." *Id.* (citation omitted). Instead, the "[f]actual allegations must be enough to raise a right to relief above the speculative level[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, a complaint must "possess enough heft" to establish "something beyond the mere possibility" of a violation. *Id.* at 557–58. Moreover, while ERISA's statutes of limitation and repose are affirmative defenses, a court can dismiss a complaint as untimely when those defenses are apparent from the face of the complaint. *See Cataldo v. U.S. Steel Corp.*, 676 F.3d 542, 547 (6th Cir. 2012).

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT DOES NOT PLEAD BREACHES OF FIDUCIARY DUTY OR PROHIBITED TRANSACTIONS

A. The Complaint Does Not Allege Facts Specific to the Plan

The Complaint fails to allege that any of the alleged misconduct by BCBSM occurred with respect to or harmed the Plan. For example, Plaintiff alleges in a conclusory manner that

"BCBSM's NASCO claims processing system has been found to consistently result in improper payment of claims," ECF No. 1, PageID.15 ¶ 102, and then states, with no factual support, that "therefore" BCBSM also made these same errors with respect to the Plan's claims, *id.* at PageID.16 ¶ 108. But the Complaint does not include a single factual allegation of an improper payment made in respect of the Plan or even that any Plan participant received care from an out-of-network provider. Raising "the mere possibility" of an ERISA violation is insufficient to state a claim. *Twombly*, 550 U.S. at 557–58.

The Complaint also fails to plead any specific instances in which BCBSM allegedly failed to properly maintain client data. Instead, the Complaint alleges only 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). Indeed, the Complaint fails to identify any specific information that is missing with respect to any particular claim. The Complaint also fails to plead any facts about the supposed standard a prudent fiduciary would have to meet with respect to the collecting, processing, paying, and maintaining submitted claims data. Similarly, the Complaint fails to identify any payments made by BCBSM with respect to the Plan under the Shared Savings Program, much less any compensation paid to BCBSM for such services.

In place of factual allegations specific to the Plan, the Complaint offers allegations of alleged misconduct *generally* and *speculation* that misconduct occurred with respect to the Plan. But general allegations and speculation are not enough to state a claim. *Twombly*, 550 U.S. at 557–58 (A complaint must "possess enough heft" to establish "something beyond the mere possibility" of a violation); *see, e.g.*, *England v. DENSO Int'l Am. Inc.*, 136 F.4th 632, 636–37

(6th Cir. 2025) (affirming dismissal where plaintiffs failed to plead any context-specific facts evidencing harm to ERISA-governed plan).

B. The Complaint Does Not Plead a Breach of Fiduciary Duty Regarding Claims Processing

The Complaint asserts that BCBSM breached its fiduciary duty with respect to claims processing because BCBSM supposedly paid claims that were improperly coded by providers. ECF No.1, PageID.15-16 ¶¶ 101–08. As discussed above, this lawsuit fails because the Complaint does not allege that there were any such claims processing errors with respect to Tiara Yachts or the Plan. It also fails because the Complaint does not allege facts showing how claims processing errors constitute a breach of fiduciary duty.

Specifically, the Complaint does not allege any facts about the supposed standard a prudent fiduciary would have to meet for claims processing, let alone facts showing how BCBSM allegedly fell short of that standard. Instead, the Complaint baldly alleges that BCBSM's "claims processing system has been found to consistently result in improper payments of claims" and lists purported "[c]ommon errors." *Id*. at PageID.15 But the fiduciary duty of care "requires prudence, not prescience," *DeBruyne v. Equitable Life Assurance Soc'y of U.S.*, 920 F.2d 457, 465 (7th Cir. 1990) (citation omitted), and merely pointing to processing errors is not sufficient to allege a breach of fiduciary duty. *See Senior Lifestyle Corp. v. Key Benefit Adm'rs, Inc*., No. 1:17-cv-02457-JMS-MJD, 2020 WL 2039928, at *13 (S.D. Ind. Apr. 28, 2020) ("[T]here is no evidence that KBA acted imprudently when it paid the erroneous claims."). Accordingly, the Complaint fails to plead a breach of fiduciary duty under ERISA. *See, e.g.*, *id.*; *see also Ashcroft*, 556 U.S. at 678 ("[T]he-defendant-unlawfully-harmed-me" allegation is insufficient to plead a claim).

II. PLAINTIFF'S CLAIMS ARE TIME-BARRED

Breach of fiduciary duty and prohibited transaction claims under ERISA must be brought within six years after the alleged breach or violation occurred. 29 U.S.C. § 1113(1). This is referred to as ERISA's statute of repose. *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178, 180 (2020). This period is shortened to three years when a plaintiff has "actual knowledge of the breach or violation." 29 U.S.C. § 1113(2). This is referred to as ERISA's statute of limitations. *Intel Corp.*, 589 U.S. at 181. To satisfy the actual knowledge requirement, the plaintiff only needs to have "knowledge of the facts or transaction that constituted the alleged violation; it is not necessary that the plaintiff also have actual knowledge that the facts establish a cognizable legal claim under ERISA in order to trigger the running of the statute." *Diederichs v. FCA US LLC*, No. 23-CV-11287, 2024 WL 5168087, at *6 (E.D. Mich. Dec. 19, 2024) (quoting *Wright v. Heyne*, 349 F.3d 321, 330 (6th Cir. 2003)).

The Complaint here, which was filed on July 1, 2022, alleges that BCBSM breached its fiduciary duties under ERISA by improperly paying *individual* claims and/or by withholding relevant data for *individual claims* and/or by improperly compensating itself under the Shared Savings Program. *See, e.g.*, ECF No.1, PageID.12 ¶ 89 (describing the importance of "line-item detail associated with *each* claim," including "what was ultimately paid") (emphasis added); *id.* at PageID.13 ¶ 92 ("Tiara Yachts' claims data should reflect all information necessary to ascertain whether *a* claim was properly processed and/or paid.") (emphasis added). Therefore, each alleged overpayment, deficiency, or Shared Savings Program recovery is its own individual claim that must comply with the relevant statutes of limitation and repose. Moreover, the continuing violation doctrine cannot apply here because Plaintiff's claims challenge specific transactions. *See Cassell v. Vanderbilt Univ.*, 285 F. Supp.3d 1056, 1068 n.8 (M.D. Tenn. 2018) (continuing violation doctrine does not apply to prohibited transaction claims). The doctrine also

does not apply to the three-year statute of limitations because of knowledge on the part of the plaintiff. *Clarke v. Pilkington N. Am., Inc.*, No. 21-12119, 2022 WL 4483817, *2–4 (E.D. Mich. Sept. 27, 2022).

The Complaint itself establishes that Plaintiff had actual knowledge of the individual claims submitted and processed. The Complaint acknowledges that Plaintiff was provided with monthly claims payment details through the termination of the Plan in December 2018. *See, e.g.*, ECF No. 1-6, PageID.59 (referring to the line items on the monthly customer invoice and the reporting "via e-bookshelf to provide claim level detail to support the charges each month"); ECF No. 12-2, PageID.142 at Art. II § D (stating that Plaintiff was provided with "access to a paid Claims listing"). In addition, the ASC provided Plaintiff with a process to dispute any claims, and it also gave the group health plan rights to audit any paid claims. *See* ECF No. 12-2, PageID.144 at Art. II § G.

The information available through the monthly customer invoice, e-bookshelf, disputed claim process, and the ASC audit process was sufficient to provide Plaintiff with actual knowledge of the claims submitted by health care providers, including the amount paid. Tiara Yachts, as a fiduciary itself with a duty to monitor BCBSM, was required to "ensure that [BCBSM's] performance [was] in compliance with the terms of the plan and statutory standards," *In re AEP ERISA Litig.*, 327 F. Supp. 2d 812, 832 (S.D. Ohio 2004) (quoting 29 C.F.R. § 2509.75–8), and it therefore had actual knowledge of the individual claims paid. Its claims are thus barred by ERISA's three-year statute of limitations.

Indeed, the Complaint clearly acknowledges that this information was available and sufficient to raise questions or disputes regarding payments made by BCBSM on the Plan's behalf (and only speculates without specifying that any information was missing, *see supra*

Section I.A.). ECF No. 1, PageID.6 ¶ 38 ("Dennis Wegner was alerted *by a BCBSM customer about a significant medical claim*[.]") (emphasis added). Moreover, as noted above, Plaintiff's allegations largely stem from the allegations made by a disgruntled former employee, Dennis Wegner, who filed his unsuccessful whistleblower complaint on February 5, 2019, almost three years before Plaintiff filed this action. *See id.* at PageID.9 ¶ 65; ECF No. 1-5.

Based on the foregoing, the statute of limitations expired in December 2021, because Plaintiff already had supporting and underlying data sufficient to give it knowledge of these claims, or at the latest in February 2022, because Plaintiff had access to Mr. Wegner's complaint. *See, e.g.*, *Clarke*, 2022 WL 4483817, at *2–3 (dismissing ERISA claims because statute of limitations defense was apparent from face of complaint).

Accordingly, the Complaint should be dismissed in its entirety as untimely under the statute of limitations.

At a minimum, claims related to any alleged payments made before July 1, 2016, are barred under ERISA's statute of repose because those claims must be, but were not, brought within six years of the alleged breach. *See Intel Corp.*, 589 U.S. at 180. Such claims must be dismissed for this additional reason.

CONCLUSION

For these reasons, BCBSM respectfully asks this Court to dismiss the Complaint in its entirety, with prejudice.

Dated: July 7, 2025

Respectfully submitted,

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