

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Case No. 1:22-cv-603

Plaintiff/Counter-Defendant,

Honorable Robert J. Jonker

v.

Magistrate Judge Ray Kent

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant/Counter-Plaintiff.

PLAINTIFF/COUNTER-DEFENDANT'S OBJECTION TO DEFENDANT/COUNTER-PLAINTIFF'S UNILATERAL SUBMISSION OF PROPOSED QUALIFIED PROTECTIVE ORDER CONCERNING CONFIDENTIALITY (ECF NO. 117)

Plaintiff/Counter-Defendant Tiara Yachts, Inc. ("Tiara Yachts") respectfully objects to Defendant/Counter-Plaintiff Blue Cross Blue Shield of Michigan's ("BCBSM") unilateral filing of a proposed "Qualified Protective Order Concerning Confidentiality" as if stipulated (ECF No. 117).

The proposed order is not agreed to by Tiara Yachts. BCBSM submitted it without Tiara Yachts' approval or consent, notwithstanding ongoing meet-and-confer efforts. For context, Tiara Yachts first transmitted a draft protective order to BCBSM on September 8, 2025. **Exhibit A.** BCBSM did not respond or provide any update on coming to an agreement to a protective order in this case until November 7, 2025; and then only did so with a wholesale re-write that inserted numerous overbroad, unnecessary, and non-standard provisions—including automatic Attorneys' Eyes Only designations and an expert pre-approval regime (among many others).

On November 12, 2025, Tiara Yachts provided a non-exhaustive list of specific objections to BCBSM's re-write and overbroad protective order. *Two days later*, BCBSM nevertheless filed

its proposed order *sua sponte* and without agreement, even though Tiara Yachts is still in the process of reviewing and investigating the issues raised by BCBSM's revisions. In fact, the proposed order by BCBSM suffers from at least the following general flaws, including, but not limited to: (a) it allows the redaction of claims information belonging to Tiara Yachts, which would be prejudicial; (b) does not contain a process or procedure to remedy in a timely fashion a confidentiality designation that is objected to; and (c) post-termination procedures are unnecessarily restrictive and inconsistent with previously accepted practices (there's likely more, but Tiara Yachts' counsel is still in the process of reviewing the present version).

Indeed, during the midst of Tiara Yachts' review, BCBSM's counsel asked Tiara Yachts' counsel through a series of emails whether the parties could agree that the pending depositions scheduled on Monday, November 17, 2025, and Tuesday, November 18, 2025, would be covered by any protective order that ultimately gets entered in this case. In responding, "yes, we can agree" Tiara Yachts' counsel was indicating agreement with that question alone—and not indicating that Tiara Yachts was in alignment on the circulated protective order (as Tiara Yachts only has had this lengthy version for a couple days).

Therefore, Tiara Yachts respectfully requests that the Court decline to enter BCBSM's unilaterally submitted proposal and either strike or deny it without prejudice.

Moreover, consistent with prior litigation practice, Tiara Yachts believes the Court should enter the same form protective order BCBSM has agreed to in past cases (*see e.g.*, **Exhibit A**), or, in the alternative, direct the Parties to complete a short, focused meet-and-confer and submit either a jointly agreed form or competing proposals limited to the genuinely disputed provisions for the Court's resolution.

Respectfully submitted,

VARNUM LLP
Attorneys for Tiara Yachts, Inc.

Dated: November 14, 2025

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EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Case No. 1:22-cv-603

Plaintiff,

Honorable Robert J. Jonker
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v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

STIPULATED CONFIDENTIALITY ORDER

WHEREAS, the parties consider certain information and documents in their possession to be confidential and proprietary, including, *inter alia*, sensitive financial, commercial, business, and medical information and, therefore, mutually desire that an order limiting the use, access to, and disclosure of such information and documents be entered, and the Court being otherwise fully informed;

IT IS HEREBY ORDERED that, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the production and use of documents and information produced or made available in this matter shall proceed in accordance with the following terms:

I. SCOPE OF THE ORDER

This Order applies to all documents (and the contents thereof) served, transmitted, or incorporated in this lawsuit (the "Action") pursuant to Rules 26 through 36 and/or Rule 45 of the Federal Rules of Civil Procedure.

II. DESIGNATION OF MATERIALS AS "CONFIDENTIAL"

A. Confidential Designation: The supplying party (including third parties) may designate material (including paper or electronic documents, written discovery responses, and/or deposition testimony or exhibits) as "Confidential" if such party believes in good faith, and after reasonable inquiry, that such material is entitled to protection under Federal Rule 26, or any other applicable law. This Order authorizes the disclosure of Protected Health Information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), including all applicable regulations and guidance issued by the Secretary of the United States Department of Health and Human Services (collectively, the "HIPAA Rules"), including specifically 42 C.F.R. Part 2 and 45 C.F.R. §§ 164.512(e)(1)(ii)(B), 164.512(e)(1)(v), as well as all state laws and regulations regarding the privacy and security of personal information (collectively with the HIPAA Rules, the "Privacy and Security Rules"). Medical information protected by the HIPAA Rules is entitled to protection and is treated as though designated as Confidential regardless of whether it is designated Confidential by the

supplying party. This Stipulated Confidentiality Order constitutes a Qualified Protective Order, as that term is defined in the Privacy and Security Rules. The Parties are expressly prohibited from using or disclosing information protected by the Privacy and Security Rules obtained pursuant to this Stipulated Confidentiality Order for any purpose other than this action. Nothing in this Order is intended to expand the scope of materials entitled to protection beyond what is covered by Federal Rule 26 or other applicable law. Material designated as "Confidential" is referred to herein as "Confidential Information."

B. Confidential Health Information: "Confidential Health Information" means sensitive personal health information and encompasses any patient health information protected by any state or federal law, including, but not limited to, "Protected Health Information," as defined herein. As used in this Stipulated Confidentiality Order, the term "Confidential Information" always encompasses Confidential Health Information.

C. Protected Health Information: Protected Health Information has the same scope and definition as set forth in 45 C.F.R. §160.103. Without limiting the generality of the foregoing, Protected Health Information includes, but is not limited to, health information, including demographic information, relating to: the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, which identifies or reasonably could be

expected to identify the individual. Protected Health Information also includes, but is not limited to, medical bills, claims forms, charges sheets, medical records, medical charts, test results, notes, dictation, invoices, itemized billing statements, remittance advice forms, explanation of benefits, checks, notices, and requests, and includes all notes, summaries, compilations, extracts, abstracts or oral communications that are based on or derived from Protected Health Information, regardless of form or format. Protected Health Information further includes information that contains the following identifiers of a patient/insured/member or of a relative, employer, or household member of a patient/insured/member:

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

- (xii) vehicle identifiers and serial numbers, including license plate numbers;
- (xiii) device identifiers and serial numbers;
- (xiv) web universal resource locators ("URLs");
- (xv) internet protocol ("IP") address numbers;
- (xvi) biometric identifiers, including finger and voice prints;
- (xvii) full face photographic images and any comparable images;
- (xviii) any other unique identifying number, characteristic, or code; and
- (xix) any other information that the disclosing party knows could be used alone or in combination with other information to identify an individual who is subject of the information.

Protected Health Information also includes the individual electronic records or files contained in encrypted mass storage media used to produce Protected Health Information. Further, Protected Health Information includes any records or files containing Protected Health Information that are unencrypted and thereby reduced, transferred, saved, or re-encrypted in any other medium by any person. (Examples of such records or files may include, by way of description and not limitation, paper copies or printouts, facsimiles, unencrypted files, or other mass storage devices upon which such Protected Health Information may be stored or located.)

D. Persons Eligible to View Confidential Information: Only Qualified Persons are authorized to view Confidential Information in this case (including Confidential Health Information), who are defined as:

- i. Attorneys of record in this Action and secretaries, paralegals,

law clerks and support staff employees to whom, in the opinion of the attorney of record for the receiving party, it is necessary that the information be disclosed for purposes of the Action;

- ii. Any person who is retained by a party or its attorneys of record in this Action solely as an independent expert for the purposes of this Action and who agrees in writing to be bound by the terms of this Stipulated Confidentiality Order. The independent expert must complete and sign a Confidentiality Statement in the form of **Exhibit A**, attached hereto.
- iii. Officers, directors, employees, and/or business consultants expressly designated by each party, who, by accepting said designation agree to be bound by the terms of this Stipulated Confidentiality Order.
- iv. During their depositions or in preparation for their depositions, witnesses in this Action and their attorneys to whom disclosure is reasonably necessary. Such persons may review, but may not retain documents containing Confidential Information, except a witness and his/her attorney(s) may receive a copy of the transcript of the witness's testimony and all exhibits marked at his/her deposition in connection with review of the transcripts.
- v. Any other person who is designated as a Qualified Person by Order of this Court, after notice to all parties, or who, by written agreement of all parties, is designated as a Qualified Person.
- vi. Court reporters, stenographers, clerks, law clerks, and/or other court personnel employed by the Court, and court reporters, videographers, and/or stenographers at depositions.
- vii. All persons specifically engaged by a party for the purpose of supporting a party's litigation effort (including, but not limited to firms engaged in the processing, hosting, and/or facilitating the review of documents produced to a party; making photocopies; preparing demonstrative aids for hearing or trial; conducting or participating in jury studies and/or research; mediating the parties' dispute; or conducting case assessments); so long as each respective vendor or contractor has a confidentiality agreement in place with retaining counsel or party that would cover the information in question.

- viii. The author or recipient of the document (not including a person who received the document solely in the course of the Action);

Each party reserves the right to seek "Attorneys' Eyes Only" designations for certain information should it believe such protection is necessary and may do so by motion to the Court.

E. Method of Designation: All material produced in this matter shall be accorded the protections of this Stipulated Confidentiality Order if affirmatively designated as "Confidential." Documents and things produced which contain Confidential Information shall be designated as such by marking each page of the document or thing at or before the time of production substantially as follows:

"CONFIDENTIAL"

or

**"CONFIDENTIAL PURSUANT TO
STIPULATED CONFIDENTIALITY ORDER"**

In lieu of marking the original of documents, the designating party may mark the copies that are produced or exchanged. The designation of materials as Confidential constitutes a representation by the designating party and its counsel that they, in good faith, believe that the material so designated contains or constitutes information which is properly the subject of this Stipulated Confidentiality Order.

F. Designation of Deposition Records: Information or records disclosed at a deposition in this Action may be designated as Confidential by indicating on the record before the conclusion of the deposition that the particular information or

record, and associated testimony, is Confidential and subject to the provisions of this Protective Order. Deposition testimony shall not be considered Confidential under this Stipulated Confidentiality Order unless such a designation is made on the record during the deposition, except as set forth in Paragraph II.H.

G. Designation of Confidential Health Information: Any document, transcript, or other material disclosed in this action by any person that contains Confidential Health Information as defined in Paragraph II.B. of this Stipulated Confidentiality Order must be designated as "Confidential."

The inadvertent failure to designate as "Confidential" any document, transcript, or other material containing Confidential Health Information prior to its disclosure shall not be deemed a waiver in whole or in part of a claim or future claim that such material constitutes Confidential Information. Upon learning that it inadvertently disclosed any document, transcript, or other material containing Confidential Health Information without designating such material as "Confidential," the party must retroactively designate the disclosed material as "Confidential" as soon as practicable. The party must do so by notifying all other parties in writing. After receiving such notice, the parties must thereafter treat the newly designated material as "Confidential" as applicable, and the parties must cooperate to restore the proper designation of the inadvertently disclosed material. No prior disclosure of newly designated material shall be considered a violation of this Stipulated Confidentiality Order.

H. Effect of Designation and/or Failure to Designate: Designation of materials as Confidential is a representation by the designating party that there is a valid basis for such designation. Notwithstanding the foregoing, the failure to designate materials as Confidential shall not be used against any party as an admission or concession that the materials are not eligible for designation, nor shall it constitute, be construed as, or have the effect of, a waiver of any kind. In the event that a party inadvertently fails to designate materials as Confidential, any party to whom the materials were produced, shall, upon written notice, designate, and thereafter treat, such materials as though designated as Confidential, as applicable.

I. Compromise of Confidential Information. Each receiving party must promptly notify the designating party of any loss or compromise of the confidentiality of Confidential Information, and must, as soon as practicable, but in no event longer than five (5) calendar days after the discovery of any loss or compromise of the confidentiality of Confidential Information, make reasonable efforts to retrieve all copies of the material containing Confidential Information, inform the persons to whom the unauthorized disclosures were made of all terms of this Stipulated Confidentiality Order, and request that such persons execute the Confidentiality Statement attached hereto as **Exhibit A**.

III. TREATMENT OF MATERIALS SUBJECT TO STIPULATED CONFIDENTIALITY ORDER

A. Prohibited Use of Materials: Materials designated as Confidential shall not be: (1) made available, directly or indirectly or through paraphrasing, by the party receiving it to any persons or entities other than as set forth in Paragraphs III.B – H. of this Stipulated Confidentiality Order; or (2) used by any party for any purpose other than in connection with this Action. Nothing herein is, however, intended to restrict counsel's use of the general knowledge it gains from reviewing materials subject to this Order, as long as such use does not include counsel communicating the specific contents of such materials.

B. Permitted Use of Materials: In addition to permitted uses outlined in this Stipulated Confidentiality Order, nothing shall prevent disclosure beyond the terms of this Order if the party and/or third-party designating the information as Confidential consents, in writing, to such disclosure, withdraws the Confidential designation, or if the Court, after notice to all parties, orders such disclosure. This Stipulated Confidentiality Order does not prohibit the use or disclosure by a person of materials lawfully obtained or developed by such person independently of discovery in this matter, even if such materials are also obtained through discovery in this matter.

C. Inapplicability of Stipulated Confidentiality Order: This Stipulated Confidentiality Order shall not apply to information that: (i) was, is, or becomes

public knowledge (not by any way of a violation of this Stipulated Confidentiality Order); (ii) was or is acquired from a third party possessing such information and having no obligation of confidentiality to the designating party; or (iii) the receiving party establishes was already in its rightful and lawful possession at the time of the disclosure. This order does not apply to or restrict in any way the conduct of the Court or its staff.

D. Filing and Use of Confidential Material in Court: Materials marked "Confidential" shall not be filed unless the designating party prior to filing consents in writing to de-designate the material or unless the filing party obtains an order from the Court authorizing the filing of such materials under seal. However, this Order does not authorize the filing of any documents or other materials under seal, and any party seeking to file such items under seal must file a motion for leave to do so in accordance with Local Rule 10.6 and Section IV.H.

E. Disclosure of Confidential Health Information: Prior to disclosure of Confidential Health Information, which must be designated as "Confidential," or, if it meets the definition set forth in Paragraph II.B of this Stipulated Confidentiality Order, the designating party must encrypt such Confidential Health Information, as well as any documents or files containing such Confidential Health Information, using a means or process that renders the Confidential Health Information unusable, unreadable, or indecipherable to unauthorized individuals in accordance with the guidance and standards articulated in 74 Fed. Reg. 42,740 (Aug. 24, 2009)

(identifying the encryption processes that have been tested and judged by the National Institute of Standards and Technology (NIST) to meet this standard). Such encryption processes (or such other protective measures as are reasonably necessary to protect against the access or use by any unauthorized individuals in conformance with the HIPAA Rules) shall be used when Confidential Health Information is at rest or in motion, as well as where such Confidential Health Information is placed or maintained on a mobile device (such as a laptop, flash drive, or otherwise). Encryption is not required while the Confidential Health Information is in use.

F. Redaction of Confidential Health Information: A party disclosing Confidential Health Information may, but is not required to, redact any Confidential Health Information, or take suitable precautions in order to protect the privacy of its members, subscribers, or patients, but only to the extent such redaction or other precaution does not result in prejudice to another party in this Action.

G. Confidential Information Subpoenaed or Ordered Produced in Other Litigation, Administrative Proceedings, or Regulatory Proceeding.

i. If a receiving party is served with a subpoena or an order issued in other litigation, administrative proceedings, or regulatory proceedings that would compel disclosure of any discovery material designated in this Action as Confidential Information by a party or non-party other than the receiving party, the receiving party must, to the extent permitted by law, so notify the designating party, in writing, immediately and in no event more than fourteen (14) calendar days after

receiving the subpoena or order. Such notification must include a copy of the subpoena or court order to the extent permitted by law.

ii. To the extent permitted by law, the receiving party must also immediately inform in writing the party who caused the subpoena or order to issue in the other litigation or proceeding that some or all of the discovery material covered by the subpoena or order is the subject of this Stipulated Confidentiality Order. In addition, the receiving party must deliver a copy of the Stipulated Confidentiality Order promptly to the party in the other action that caused the subpoena to issue.

iii. The purpose of imposing these duties is to alert the interested persons to the existence of this Stipulated Confidentiality Order and to afford the designating party in this Action an opportunity to try to protect its Confidential Information in the court from which the subpoena or order issued. The designating party shall bear the burden and the expense of seeking protection in that court of its Confidential Information and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this Action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the receiving party has in its possession, custody, or control information designated as Confidential Information.

H. Additional Parties. In the event additional persons or entities become parties to this Action, they shall not have access to Confidential Information produced by or obtained from any other party or third-party respondent until the

newly joined party has been made subject to this Stipulated Confidentiality Order by the Court.

I. Return of Materials Subject to the Stipulated Confidentiality

Order: As to all Confidential Information, excluding medical records, within sixty (60) calendar days after the conclusion of this litigation, including all appellate proceedings, originals or reproductions of any documents or things produced by a party containing Confidential Information shall be returned to the producing party or destroyed, except as required by law. Moreover, the office of each principal counsel may retain for its archive a single copy of any such materials. Principal counsel may also retain all exhibits, deposition transcripts, correspondence and papers filed with the Court. There shall be no restrictions on the disclosure or use of any trial exhibits, unless the exhibits were filed under seal and the Court has not lifted any such restriction on the same. As to medical records, within sixty (60) calendar days after the conclusion of this litigation, all parties will return all copies of the medical records to the supplying party or provide the producing party with satisfactory assurances that all copies have been destroyed.

IV. MISCELLANEOUS

A. Inadvertent or Unintentional Disclosure of Privileged Information:

If a party inadvertently or unintentionally produces or discloses materials that are confidential because of the attorney-client privilege, work product doctrine, or other immunity, such party shall promptly give written notice to any receiving

parties. On receiving such notice, a receiving party shall promptly destroy or return the materials identified. Nothing herein shall preclude a receiving party from otherwise challenging or disputing the privilege or immunity claimed by the supplying party, including by using the materials at issue in a manner consistent with this Stipulated Confidentiality Order.

B. Non-Waiver of Rights: This Order shall not constitute a waiver of any right(s) to: (1) object to any discovery request and withhold information and/or materials on the ground of attorney/client privilege, work product or otherwise; (2) object to the introduction of any materials as evidence at any hearing or trial in this matter; (3) seek other and further protections as to any materials that may be offered or admitted as evidence at any hearing or trial in this matter; or (4) file any other motions that may be permitted by any applicable law or court rule. Nothing in this Stipulated Confidentiality Order shall constitute an admission or waiver of any objection, claim or defense by any person or party.

C. Modifications to Order: Any person with proper standing or any party to this Action may, on motion or other request to the Court and for good cause shown, seek a modification of this Order. No modification of this Order that adversely affects the protection of any materials produced by a party shall be entered without first giving the party appropriate notice and an opportunity to be heard.

D. Binding Order: This Order shall bind all parties to this Action and any and all other persons to the fullest extent lawfully permissible.

E. Dispute Resolution: A party need not challenge the propriety of the designation of materials as Confidential at the time of designation. In the event of a dispute concerning this Stipulated Confidentiality Order, including, but not limited to, a dispute over the designation of specifically identified materials as Confidential, the attorneys for the parties shall first attempt in good faith to negotiate a resolution. If the parties are unable to resolve the dispute, the designating party shall have fourteen (14) calendar days from the date the party opposing the designation confirms in writing an impasse to file a motion pursuant to Federal Rule 26 to continue the designation of the specifically identified materials. Until the motion is resolved by the Court, the designated materials at issue shall continue to have the protections afforded by this Order. If the designating party fails to file a motion within fourteen (14) calendar days, then the material that was the subject of the dispute shall no longer be entitled to protection under this Order. In the event of such a dispute, the party designating materials as Confidential bears the burden of justifying that designation.

F. Survival of Litigation: This Order shall survive the termination of this Action, and shall remain in effect until modified, superseded, or terminated by order of the Court or by agreement of the parties.

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

H. Filing Under Seal: This order does not authorize the filing of any documents under seal. Documents may be sealed only if authorized by statute or by order of the Court for good cause shown. A party seeking to have filed under seal any paper or other matter in this case must file and serve a motion seeking requesting such relief. *See* W.D. Mich. LCivR 10.6.

IT IS SO ORDERED.

Date

Hon. Robert J. Jonker
United States District Judge

Stipulated as to form:

VARNUM, LLP

By: /s/_____

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Dated: November 14, 2025

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Dated: November 14, 2025

EXHIBIT A

CONFIDENTIALITY STATEMENT

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.
4. I have received a copy of the Stipulated Confidentiality Order in the matter entitled *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan* (Case No. 1:22-cv-603).
5. I have carefully read and understand the provisions of the Stipulated Confidentiality Order. I will comply with all of the provisions, including holding in confidence and not disclosing to anyone not qualified under the Stipulated Confidentiality Order, any Confidential Information.
6. I hereby consent to be subject to personal jurisdiction of the United States District Court for the Western District of Michigan in respect to any proceeding relative to the enforcement of the Stipulated Confidentiality Order.

Signature

Date