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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 UNITED STATES and the STATE OF
13 CALIFORNIA *ex rel.* NICOLLE O’NEILL,
14 NICOLLE O’NEILL

15 Plaintiffs/Relator

16 vs.

17 SOMNIA, INC., PRIMARY ANESTHESIA
18 SERVICES, PST SERVICES LLC, ROBERT
19 GOLDSTEIN, M.D., ROY WINSTON, M.D.,
20 BYRON MENDENHALL, M.D., QUINN
21 GEE, M.D., AND MARGARET VASSILEV,
22 M.D, and DOES 1 through 10, inclusive

23 Defendants.
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Case No. 1:15-CV-00433-DAD-EPG

**STIPULATED ORDER RE: DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION FOR STANDARD
LITIGATION**

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Attorneys for Plaintiff Nicolle O'Neill

1 **I. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this
3 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5 **II. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and will
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **III. LIAISON**

10 The parties shall identify liaisons to each other who are and will be knowledgeable
11 about and responsible for discussing their respective ESI.

12 Relator’s liaison is Andrea Gold, TYCKO & ZAVAREEI LLP, 1828 L Street NW,
13 Suite 1000, Washington, D. C. 20036, Telephone No.: (202) 973-0900, E-mail:
14 agold@tzlegal.com.

15 The liaison for Defendants Somnia, Inc., Primary Anesthesia Services, Byron
16 Mendenhall, M.D., Quinn Gee, M.D., and Margaret Vassilev, M.D. (“Somnia Defendants”), is
17 Erin Holyoke, NIXON PEABODY LLP, 300 S. Grand Ave, Suite 4100, Los Angeles, CA
18 90071, Telephone No. (213) 629-6031, E-mail: eholyoke@nixonpeabody.com..

19 Each e-discovery liaison will be, or have access to those who are, knowledgeable about
20 the technical aspects of e-discovery, including the location, nature, accessibility, format,
21 collection, search methodologies, and production of ESI in this matter. The parties will rely on
22 the liaisons, as needed, to confer about ESI and to help resolve disputes without court
23 intervention.

24 **IV. PRESERVATION**

25 The preservation of potentially relevant ESI is reasonable and proportionate. To reduce
26 the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree
27 that:

- 28 a) Only ESI created or received between December 1, 2011 and final judgment in this

1 matter will be preserved;

2 b) The following types of ESI should be preserved and the custodians, or general job titles
3 or descriptions of custodians, for whom they believe ESI should be preserved, e.g., “HR
4 head,” “scientist,” and “marketing manager”:

5 i. Custodians of Somnia Defendants: Robert Goldstein, Roy Winston, Byron
6 Mendenhall, Quinn Gee, Margaret Vassilev, Kimberly Carriere, Karen Bennett,
7 Brent Sommers, Adam Dorin, Margaret See, Michelle Martinez, Mattie Cantu,
8 Fitz George, Erin Murphy-Haston, Heather Lee, and Thomas Schares (“Somnia
9 Defendants’ designated custodians”).

10 ii. Custodians of Relator: Relator Nicolle O’Neill (“Relator’s designated
11 custodians”).

12 iii. The parties agree to add or remove custodians as reasonably necessary.

13 iv. Sources for Somnia Defendants:

14 – Sources for each Custodian: all document management systems, computer
15 archives, backup tapes or disks, hard drives, and/or electronic mail, or
16 instant messaging.

17 – Sources not attributable to a Custodian: servers, electronic document
18 repositories, or any other electronic file storage media, relevant shared
19 network folders or repositories which Somnia Defendants identify
20 following a reasonable and diligent investigation as likely to contain
21 responsive ESI.

22 v. Sources for Relator:

23 – Sources for each Custodian: all document management systems, computer
24 archives, backup tapes or disks, PDAs, smart phones, personal computers,
25 hard drives, and/or electronic mail, instant messaging, or text messaging
26 accounts.

27 c) The parties have agreed on the number of custodians per party for whom ESI will be
28 preserved as set forth in paragraph (b) above;

- 1 d) These data sources are not reasonably accessible because of undue burden or cost
2 pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but
3 not searched, reviewed, or produced: none known at this time;
- 4 e) The following sources need not be preserved: backup media created before December 1,
5 2011, digital voicemail, instant messaging, automatically saved versions of documents;
- 6 f) In addition to the agreements above, the parties agree that data from these sources (a)
7 could contain relevant information but (b) under the proportionality factors, should not be
8 preserved: none known at this time;
- 9 g) Nothing herein is intended to or does waive any objections based on burden or
10 proportionality that the parties may have with respect to documents or information sought
11 by specific requests.

12 **V. SEARCH**

13 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if
14 appropriate, the parties will meet and confer about methods to search ESI in order to identify ESI
15 that is subject to production in discovery and filter out ESI that is not subject to discovery. The
16 parties have met and conferred in response to the Fed. R. Civ. P. 34 requests propounded to date
17 in this case. The parties have agreed on a list of search terms provided by counsel for Relator and
18 attached to this Agreement as **Exhibit A**. Defendants shall run the list of search terms against the
19 Sources for each of Somnia Defendants' designated custodians identified above in paragraph
20 4(b), as well as the Sources not attributable to an designated custodian which Somnia Defendants
21 identify following a reasonable and diligent investigation as likely to contain responsive ESI.

22 **VI. PRODUCTION FORMATS**

23 The parties agree to produce documents in one of the following formats: PDF,
24 TIFF, native and/or paper file formats or a combination thereof (~~check all that apply~~) ~~file~~
25 ~~formats~~. If particular documents warrant a different format, the parties shall cooperate to
26 arrange for the mutually acceptable production of such documents. The parties shall not
27 degrade the searchability of documents as part of the document production process.

1 **VII. DOCUMENTS PROTECTED FROM DISCOVERY**

- 2 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
3 protected document, whether inadvertent or otherwise, is not a waiver of privilege
4 or protection from discovery in this case or in any other federal or state
5 proceeding. For example, the mere production of privileged or work-product-
6 protected documents in this case as part of a mass production is not itself a waiver
7 in this case or in any other federal or state proceeding.
- 8 b) Communications involving trial counsel and in-house counsel managing this
9 litigation that post-date the filing of the complaint need not be placed on a
10 privilege log. Communications may be identified on a privilege log by category,
11 rather than individually, if appropriate.

12 **VIII. MODIFICATION**

13 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
14 Court for good cause shown.

15
16 DATED: January 7, 2019

SCHONBRUN SEPLOW
HARRIS & HOFFMAN LLP

/s/ Wilmer J. Harris

17
18 By: _____

19 Wilmer J. Harris
20 Attorneys for Relator/Plaintiff, Nicolle O'Neill

21 DATED: January 7, 2019

NIXON PEABODY LLP

/s/ Jason Gonzalez

22
23 By: _____

24 Jason Gonzalez
25 Attorneys for Defendant
26 SOMNIA, INC., PRIMARY ANESTHESIA
27 SERVICES, PST SERVICES, LLC, BYRON
28 MENDENHALL, M.D., QUINN GEE, M.D., and
MARGARET VASSILEV, M.D.

ORDER

The above stipulation of the parties is hereby adopted as modified in section VI.

IT IS SO ORDERED.

Dated: **January 7, 2019**

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

Search Terms – *United States ex rel. O’Neill*, Case No. 1:15-cv-00433-DAD-EPG

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- 3 chart! /20 “medical direction”
- 4 chart! /20 “medical supervision.”
- 5 MD /20 practic* /10 “independent* anesthes*” /20 "medic* direct*"
- 6 anesthes! /20 “medic! supervis!”
- 7 TEFRA! /20 “medic! direct!”
- 8 TEFRA! /20 “medic! supervis!”
- 9 criteria /20 “medic! direct!”
- 10 criteria /20 “medic! supervis!”
- 11 fals! /20 “medic! direct!”
- 12 fals! /20 “medic! supervis!”
- 13 overpay! /20 “medic! direct!”
- 14 overpay! /20 “medic! supervis!”
- 15 Medicare /20 “medic! direct!”
- 16 Medicare /20 “medic! supervis!”
- 17 Medi-Cal /20 “medic! direct!”
- 18 Medi-Cal /20 “medic! supervis!”
- 19 CMS /20 “medic! direct!”
- 20 CMS /20 “medic! supervis!”
- 21 Nicolle /20 “medic! direct!”
- 22 Nicolle /20 “medic! supervis!”
- 23 Nicolle /20 resign!
- 24 ONeill /20 “medic! direct!”
- 25 ONeill /20 “medic! supervis!”
- 26 ONeill /20 resign!
- 27 “concurrent” /20 “medic! direct!”
- 28 “concurrent” /20 “medic! supervis!”

1 "alone" /20 "medic! direct!"
2 "alone" /20 "medic! supervis!"
3 "lunch" /20 "medic! direct!"
4 "lunch" /20 "medic! supervis!"
5 "absent" /20 "medic! direct!"
6 "absent" /20 "medic! supervis!"
7 "golf" /20 "medic! direct!"
8 "golf" /20 "medic! supervis!"
9 immediat! avail! /20 "medic! direct!"
10 immediat! avail! /20 "medic! supervis!"
11 "mendenhall" /20 "medic! direct!"
12 "mendenhall" /20 "medic! supervis!"
13 "mendenhall" /20 "golf"
14 "mendenhall" /20 "lunch"
15 "mendenhall" /20 "absent"
16 "mendenhall" /20 "alone"
17 "mendenhall" /20 "TEFRA"
18 "mendenhall" /20 "criteria"
19 "mendenhall" /20 chart! /10 sign!
20 "gee" /20 "medic! direct!"
21 "gee" /20 "medic! supervis!"
22 "gee" /20 "lunch"
23 "gee" /20 "absent"
24 "gee" /20 "alone"
25 "gee" /20 "TEFRA"
26 "gee" /20 "criteria"
27 "gee" /20 chart! /10 sign!
28 "roy" /20 "medic! direct!"

1 “roy” /20 “medic! supervis!”
2 “roy” /20 “golf”
3 “roy” /20 “lunch”
4 “roy” /20 “absent”
5 “roy” /20 “alone”
6 “roy” /20 “TEFRA”
7 “roy” /20 “criteria”
8 “roy” /20 chart! /10 sign!
9 “vassilev” /20 “medic! direct!”
10 “vassilev” /20 “medic! supervis!”
11 “vassilev” /20 “golf”
12 “vassilev” /20 “lunch”
13 “vassilev” /20 “absent”
14 • “vassilev” /20 "under-staff*" w/20 “O.R.” OR “oper*”
15 “alone”
16 “vassilev” /20 “TEFRA”
17 “vassilev” /20 “criteria”
18 “vassilev” /20 chart! /10 sign!
19 criteria /20 “medic! direct!”
20 criteria /20 “medic! supervis!”
21 criteria /20 “QZ”
22 staff! /20 “upcod!”
23 staffing /20 “medic! direct!”
24 staffing /20 “medic! supervis!”
25 TEFRA /20 “staff!”
26 “short-staff!” /20 “medic! direct!”
27 “short-staff!” /20 “medic! supervis!”
28 “short-staff!” /20 “TEFRA”

1 “short-staff!” /20 “concurrent”
2 “short-staff!” /20 “Medicare”
3 “short-staff!” /20 “upcod!”
4 “short-staff!” /20 “overpay!”
5 “under-staff!” /20 CRNA
6 “under-staff!” /20 MD
7 "under-staff!" w/20 “O.R.” OR “oper!”
8 fraud! /20 bill!
9 bill! /20 irregular!
10 EMR /20 chang!
11 “electronic medical record” /20 chang!
12 ratio! /20 supervis!
13 ratio! /20 MD
14 ratio! /20 CRNA
15 chart! /20 MD
16 “chart* w/20 “O.R.” OR “oper!”
17 chart! /20 CRNA
18 “Economics of Somnia”
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