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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES and the STATE OF CALIFORNIA ex rel. NICOLE O'NEILL. NICOLE O'NEILL

Plaintiff,

vs.

SOMNIA, INC., PRIMARY ANESTHESIA SERVICES, PST SERVICES LLC, ROBERT GOLDSTEIN, M.D., ROY WINSTON, M.D., BRYON MENDENHALL, M.D., QUINN GEE, M.D., AND MARGARET VASSILEV, M.D, AND DOES 1 through 10 inclusive,

Defendants.

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

**JOINT STIPULATION TO CONTINUE SCHEDULE; ORDER; AND DECLARATIONS OF WILMER HARRIS AND JASON GONZALEZ IN SUPPORT OF JOINT STIPULATION**

Date Action Filed: March 19, 2015

Plaintiff Nicole O'Neill ("Plaintiff") and Defendants Somnia, Inc., Primary Anesthesia Services, Byron Mendenhall, M.D., Quinn Gee, M.D. and Margaret Vassilev, M.D. ("Defendants"), by and through their respective counsel of record, and supported by the declarations of Wilmer Harris and Jason Gonzalez filed concurrently herewith and incorporated by reference, hereby jointly stipulate as follows:

WHEREAS, on March 19, 2015, Plaintiff filed under seal her initial Complaint against Defendants;

1           WHEREAS, in or around April 2017, the filing was unsealed and Defendants  
2 were served with the Complaint;

3           WHEREAS, on June 7, 2017, Defendants filed a Motion to Dismiss;

4           WHEREAS, rather than oppose the Motion to Dismiss, Plaintiff opted to file  
5 an amended complaint on July 7, 2017;

6           WHEREAS, on August 21, 2017, Defendants filed a Motion to Dismiss  
7 Plaintiff's First Amended Complaint;

8           WHEREAS, on February 2, 2018, the Court ruled on Defendants' Motion to  
9 Dismiss Plaintiff's First Amended Complaint;

10           WHEREAS, on February 28, 2018, Plaintiff filed the operative Second  
11 Amended Complaint;

12           WHEREAS, on February 12, 2019, the Court granted the parties' Joint  
13 Stipulation to Amend Scheduling Order;

14           WHEREAS, on December 4, 2019, a telephonic informal discovery  
15 conference was held before Magistrate Judge Grosjean with counsel for Relator and  
16 Defendants appearing;

17           WHEREAS, the parties and the Court agreed that the parties required more  
18 time to agree to, and execute, a sampling protocol for the anesthesia records and  
19 billing material to the resolution of this case and amended the Scheduling Order as  
20 follows:

21           Nonexpert Discovery Cutoff:                   June 30, 2020

22           Expert Disclosure:                               May 11, 2020

23           Rebuttal Expert Disclosure:                   June 8, 2020

24           Expert Discovery Cutoff:                       July 7, 2020

25           Except otherwise stated, the prior Scheduling Order remained in effect.

26           WHEREAS, the parties have diligently been engaged in discovery including  
27 producing and reviewing anesthesia records and bills as part of a pilot sample;  
28

1           WHEREAS, the parties have implemented a weekly call between counsel and  
2 the parties' respective experts to discuss the sampling procedure and documents;

3           WHEREAS, the parties and their experts have participated in at least four  
4 such weekly calls;

5           WHEREAS, Relator has provided a proposal sampling protocol to  
6 Defendants and the parties and their experts are engaged in meet and confer  
7 regarding Relator's proposal;

8           WHEREAS, this case relates to the 2011 – 2013 time period, and since that  
9 time Defendants have changed electronic health and billing records vendors;

10           WHEREAS, some of the technology for generating reports potentially  
11 required for sampling from those records is not within Defendants' control;

12           WHEREAS, Defendants' former records vendor for the relevant time period  
13 was sold to a new company, causing communication difficulties, but nonetheless  
14 Defendants have been in discussions with the new company to create a special  
15 project for generating reports to meet the potential needs of the sampling protocol;

16           WHEREAS, Defendants have encountered significant delays and difficulties  
17 obtaining certain anesthesia records, bills, and reports from third-parties including  
18 Kaweah Delta Medical Center;

19           WHEREAS, due to COVID-19 and the associated government orders and  
20 restrictions, the parties are unable to complete discovery including depositions of  
21 out-of-state witnesses, as well as the deposition of Relator who currently resides in  
22 New Zealand and is unable to travel to the U.S. to have her deposition taken; and

23           WHEREAS, the parties agree that additional time is necessary for Defendants  
24 to obtain documents and records from third-parties, finalize the sampling protocol  
25 and conduct the sample and finish discovery;

26           THEREFORE, the parties hereby stipulate and request the Court to amend the  
27 Scheduling Order as follows:

28           Nonexpert Discovery Cutoff:                   March 12, 2021

1 Expert Disclosure: January 26, 2021  
2 Rebuttal Expert Disclosure: February 18, 2021  
3 Expert Discovery Cutoff: March 19, 2021  
4 Last Date for Dispositive Motions March 26, 2021  
5 Trial: October 8, 2021  
6

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
8

9 DATED: May 5, 2020 SCHONBRUN SEPLOW  
10 HARRIS & HOFFMAN LLP  
11 TYCKO & ZAVAREEI LLP

12 /s/ Wilmer J. Harris  
13 By: \_\_\_\_\_  
14 Wilmer J. Harris  
15 Attorneys for Relator/Plaintiff, Nicolle  
16 O’Neill

17 DATED: May 5, 2020 NIXON PEABODY LLP  
18 /s/ Erin Holyoke  
19 By: \_\_\_\_\_  
20 Erin Holyoke

21 Attorneys for Defendant  
22 SOMNIA, INC., PRIMARY ANESTHESIA  
23 SERVICES, PST SERVICES, LLC, BYRON  
24 MENDENHALL, M.D., QUINN GEE, M.D.,  
25 and MARGARET VASSILEV, M.D.  
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1 I hereby attest that the signatories listed, and on whose behalf the filing is  
2 submitted, concur in this document's content and have authorized the filing of this  
3 document with the use of their electronic signature.  
4

5 Dated: May 5, 2020

**NIXON PEABODY LLP**

6 By /s/ Erin Holyoke

7 MICHAEL R. LINDSAY

8 JASON GONZALEZ

9 ERIN J. HOLYOKE

MAE HAU

10 Attorneys for Defendants

11 SOMNIA, INC., PRIMARY ANESTHESIA  
12 SERVICES, BYRON MENDENHALL,

13 M.D., QUINN GEE, M.D., AND

14 MARGARET VASSILEV, M.D.  
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