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

9 UNITED STATES OF AMERICA, )  
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 10 Plaintiff, )  
 )  
 11 v. ) Case No. 1:21-cv-00056-JLT  
 )  
 12 UMAIMA JAMALUDDIN, MD, )  
 )  
 13 Defendant. )  
 )  
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15 **STIPULATION AND ORDER REGARDING DISCOVERY**

16 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Plaintiff United States of  
 17 America and Defendant Umaima Jamaluddin, MD (each a “Party” and collectively, the  
 18 “Parties”), have entered into this Stipulation to reduce the time, expense, and other burdens of  
 19 discovery of documents, things, and electronically stored information (“ESI”), and to govern  
 20 discovery obligations in this action.

21 **I. SUBJECT AND SCOPE OF DISCOVERY**

- 22 At this time, the Parties anticipate needing discovery on the following subjects:
- 23 1. Any and all matters regarding the various claims asserted and allegations made by
  - 24 the United States; and
  - 25 2. Any and all matters regarding the defenses asserted in this action.

1 The Parties agree that discovery shall be completed according to the deadlines in the  
2 Court's Scheduling Order, Dkt. No. 11.

3 **II. PRESERVATION AND PRODUCTION OF DOCUMENTS**

4 **A. Preservation**

- 5 1. The Parties agree that by preserving documents, things, and ESI for the purpose  
6 of this litigation, they are not conceding that such material is discoverable, nor are  
7 they waiving any claim of privilege.
- 8 2. This Stipulation and Order does not modify any Party's obligation to maintain and  
9 preserve documents, things, and ESI where otherwise required by law or pursuant  
10 to a court order other than this Stipulation and Order.

11 **B. Limitations on Obligation to Preserve and Produce:**

12 Subject to Section II(D)(1) below, for purposes of this action, the Parties agree to limit  
13 the scope of preservation as described in this section.

- 14 1. The Parties agree that they do not need to take specific, affirmative steps to  
15 preserve for purposes of this litigation the following categories of ESI:
- 16 a. Delivery or read receipts of e-mail;
  - 17 b. Logs or other data from video-conferencing (including, *e.g.*, Microsoft Teams,  
18 Skype, or Zoom) or instant messaging tools, or logs of or other data from  
19 audio calls (including, *e.g.*, landline phones, mobile devices, Voice Over  
20 Internet Protocol ("VOIP"), or voicemail messages, involving, maintained by,  
21 or received by: (i) attorneys for the United States (and their staff, contractors,  
22 consultants, and experts); and/or (ii) attorneys for Defendant in this case (and  
23 their staff, contractors, consultants, and experts);
  - 24 c. Temporary or cache files, including internet history, web browser cache, and  
25 cookie files, wherever located;
  - 26 d. Internally facing server system logs;
  - 27 e. Externally facing or hosted file sharing system logs;
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- 1 f. System data from photocopiers or fax machines;
- 2 g. Auto-saved copies of electronic documents;
- 3 h. Deleted, slack, fragmented, or other data only accessible by forensics; and
- 4 i. Random access memory (“RAM”), temporary files, or other ephemeral data
- 5 that are difficult to preserve without disabling the operating system.
- 6 2. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Order
- 7 does not require a Party to preserve all duplicates as follows:
- 8 a. ESI existing or stored on mobile or portable devices (*e.g.*, smartphones,
- 9 tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to
- 10 be preserved pursuant to this Order *if* duplicate copies of the ESI have been
- 11 preserved in another reasonably accessible location.
- 12 b. ESI on backup tapes, continuity of operations or disaster recovery systems,
- 13 data or system mirrors or shadows, and other systems that are used primarily
- 14 for the purpose of system recovery or information restoration and are not
- 15 reasonably accessible (“Backup Systems”) need not be preserved pursuant to
- 16 this Order *if* duplicate copies of relevant ESI exist and have been preserved in
- 17 another reasonably accessible location. However, if a Party knows that
- 18 relevant ESI exists *only* on a Party’s existing Backup System, the Party will
- 19 take reasonable steps to preserve ESI on the Backup System until the Parties
- 20 can agree on how and when the ESI will be preserved or produced. Nothing
- 21 in this Stipulation and Order requires either Party to make changes to their
- 22 existing Backup System or to create a new Backup System. However, if
- 23 either Party believes that reasonable changes to a Backup System should be
- 24 made, and the Parties cannot reach agreement on those changes or on
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26 <sup>1</sup> “Duplicate copies” in the context of ESI are copies of identical documents that contain the

27 same metadata. Documents that appear identical but contain different metadata are not

28 considered duplicates and must be produced separately.

1 preservation or production of ESI under this provision, they may seek a ruling  
2 from the Court.

- 3 3. The Parties agree that they do not need to take specific, affirmative steps to  
4 preserve for purposes of this litigation relevant documents, things, or ESI  
5 (including internal communications, drafts, versions, and collaboration on case-  
6 related work) created by and, if shared with any other(s), exchanged *solely*  
7 *among*: 1) attorneys for the United States (and their staff, contractors, consultants,  
8 and experts); and/or 2) attorneys for Defendants in this case and their staff,  
9 contractors, consultants, and experts.
- 10 4. The Parties agree not to seek discovery of documents, things, and ESI that they  
11 have agreed not to preserve pursuant to Section II(B)(1)-(3) above. As provided  
12 in Section II(D)(1) below, the Parties do not need to list such items on a privilege  
13 log prepared and served in connection with discovery in this case.

14 **C. Identification & Production of Documents, Things and ESI**

- 15 1. General
- 16 a. To the extent reasonably feasible, subject to the limitations set forth in Section  
17 II(C)(1)(b) below, the Parties agree to produce documents, things, and ESI in  
18 a manner and format that is usable by the Party requesting the discovery. The  
19 Parties agree to meet and confer regarding alternative formats if discovery is  
20 produced in a manner or format that is not usable by the requesting Party.
- 21 b. The producing Party has the right to object to the manner or format of a  
22 production request if it would not be reasonably feasible or if it would be  
23 unduly burdensome. If the producing Party objects to the manner or format of  
24 a production request, the Parties agree to meet and confer regarding  
25 alternative manners or formats of production.
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1           2.     Production Format

- 2           a.     ESI and hard copy documents must be produced as specified herein.  
3                 However, nothing herein is intended to waive any Party's right to object to the  
4                 discovery and/or production sought.
- 5           b.     Except as provided in Section II(C)(2)(h) below for specific types of  
6                 documents and data, where Parties have ESI in its native form and such form  
7                 is reasonably extractable, able to be produced, and usable by the receiving  
8                 Party, ESI shall be produced in its native form and must not be converted to  
9                 another format (*e.g.*, PDF).
- 10          c.     To the extent reasonably feasible and not unduly burdensome, paper  
11                 documents must be OCR-scanned in a PDF format.
- 12          d.     PDFs shall be black-and-white, unless a black-and-white format would  
13                 obscure or degrade information (*e.g.*, color-coded graphs or charts, printed  
14                 photographs, or redlines), in which case a Party may seek a color PDF.  
15                 Nothing in this provision prevents a Party from scanning and producing paper  
16                 documents as color PDFs, nor does anything in this provision prevent a Party  
17                 from producing color PDFs if they choose.
- 18          e.     Documents must be produced in a manner that clearly reflects the manner or  
19                 location in which the documents are maintained in the ordinary course of  
20                 business, where such information is available. Breaks between files must be  
21                 noted either by a separator sheet (to be provided by undersigned counsel for  
22                 the United States) inserted between files, or by a separate document that  
23                 indicates the Bates numbers of the first and last page of each file.
- 24          f.     If a document has been prepared in several copies, or additional copies have  
25                 been made that are not identical (or are no longer identical by reason of  
26                 subsequent notation or other modification of any kind whatever), each non-  
27                 identical copy is a separate document.
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- 1 g. Except for native files, the Parties will produce responsive documents Bates-  
2 stamped with a prefix to indicate the Party producing the documents (*e.g.*  
3 JAMALUDDIN or U.S.). For native files, which cannot be Bates-stamped,  
4 the Parties will produce the native files with either the original file name, if  
5 any, or a unique numerical identifier.
- 6 h. Specifications for Specific File Types:
- 7 i. Emails will be produced in their native form, if such form is usable by the  
8 receiving Party. Parties agree to meet and confer regarding usable forms  
9 of email production. The Parties agree to produce all responsive non-  
10 privileged emails in each thread or chain and will not restrict productions  
11 to the most inclusive emails.
- 12 ii. Audio files and video files should be produced as native files, unless the  
13 native form is a proprietary format, in which case if the files can readily be  
14 converted into a non-proprietary format that can be played using Windows  
15 Media Player, the producing Party can produce in that format.
- 16 iii. PowerPoint files should be produced as native files with all notes  
17 unaltered and viewable for each file; to the extent reasonably feasible,  
18 Excel or other types of spreadsheets shall be produced as native files with  
19 all cells unlocked; and social media content (including comments, “likes,”  
20 sharing, and other interactions with the posts) shall be produced as PDFs,  
21 including information about the participants and the date and time of the  
22 communications. For production of tangible things and production of  
23 information from a structured database, proprietary software, vendor-  
24 managed software, or other source from which native production is not  
25 reasonably practicable, the Parties will meet and confer before making any  
26 production to attempt to agree on a reasonable form of production.
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1           3.     Production Specifications

- 2           a.     Responsive documents and ESI will be produced via files upload to an  
3                 electronic file transfer site, in accordance to the written instructions provided  
4                 by counsel for the Requesting Party or as otherwise agreed by the Parties. In  
5                 the case of documents and ESI produced by the United States, responsive  
6                 information will be produced via files uploaded to the Justice Enterprise File  
7                 Sharing System (JEFS).
- 8           b.     Productions via electronic file transfer will be uploaded in a manner (or  
9                 otherwise clearly labeled) to indicate (1) the Party producing the information,  
10                (2) the date of the production, and (3) the Bates ranges. If a Party needs to  
11                redact a portion of a document for which only a native file would be  
12                produced, the Parties will meet and confer regarding production of the  
13                redacted document.

14     **D.     Privileged Documents, Things and ESI**

- 15           1.     If any discovery request appears to call for the production of documents, things or  
16                 ESI covered by Section II(B), the responding Party is not required to produce or  
17                 identify such information on a privilege log, except that if a Party plans to use any  
18                 documents, things, or ESI covered by Section II(B) to support a claim or defense  
19                 in this case, the Party shall either produce the documents, things, or ESI, or shall  
20                 identify the documents, things, or ESI on a privilege log. Nothing in this section  
21                 is intended to modify the Parties' obligations (or exceptions thereto) to maintain  
22                 or produce privilege logs.

23           2.     Inadvertent Disclosure of Privileged or Protected Information

- 24           a.     The Parties agree that a disclosure of information contained within  
25                 documents, things, and ESI that is protected by attorney-client privilege, work  
26                 product protection, common interest privilege, and/or applicable  
27                 governmental privileges (such as deliberative process) does not operate as a  
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1 subject matter waiver in this case if: 1) the disclosure is inadvertent; 2) the  
2 holder of the privilege or protection took reasonable steps to prevent  
3 disclosure; and 3) the holder promptly took reasonable steps to rectify the  
4 error.

5 b. If the producing Party inadvertently discloses information that it asserts is  
6 privileged or protected, it will notify the receiving Party within 15 business  
7 days of discovery of disclosure and provide the production date, number, and  
8 volume of the disc or drive on which the production was produced  
9 (“production media”), and the Bates numbers or Document ID (for native  
10 files) of all material that it believes contains the inadvertently disclosed  
11 information.

12 c. If a production contains information that the receiving Party believes is  
13 privileged or protected and was inadvertently produced, it will promptly  
14 notify the producing Party and provide the Bates numbers or Document ID  
15 (for native files) of the item it believes was inadvertently produced. Within 15  
16 business days after receiving notification, the producing Party may make a  
17 written request for return of the material. If the producing Party does not send  
18 a written request for return of the material to the receiving Party within 15  
19 business days, the receiving Party may operate on the presumption that the  
20 producing Party has waived all claims of privilege or protection as to the  
21 material, but this still does not operate as a subject matter waiver.

22 d. When the receiving Party receives a written demand for return of the material,  
23 it will make reasonable, good faith efforts to promptly sequester, return or  
24 destroy all inadvertently produced material identified by the producing Party.

25 e. If the receiving Party must destroy or delete production media (*e.g.*, CD,  
26 DVD, thumb drive, or downloaded files) in order to destroy or delete  
27 inadvertently produced material, the producing Party will provide a duplicate  
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1 copy of the production media minus only the inadvertently produced material  
2 within 15 business days of its written request for return of the material to the  
3 receiving Party.

4 **III. MISCELLANEOUS**

- 5 A. The Stipulation may be executed in counterparts.
- 6 B. The terms of this Stipulation and Order are not exhaustive. Each Party reserves the  
7 right to subsequently request to meet and confer to address any discovery matters,  
8 including forms of production and other matters not addressed herein.
- 9 C. None of the meet and confer provisions of this Stipulation shall be construed to  
10 extend the time within which a Party must respond to a discovery request unless  
11 otherwise provide by law or the Parties jointly agree otherwise.
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1 Agreed to by counsel for the Parties:

2 Dated this 3rd day of September, 2021.

Respectfully submitted,

3 **FOR THE UNITED STATES:**

4 REBECCA B. BOND, Chief

5 /s/ Stephanie M. Berger

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Signed this 8th day of September, 2021.

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4 JENNIFER L. THURSTON  
5 CHIEF UNITED STATES  
6 MAGISTRATE JUDGE

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