

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PHILIPS RECALLED CPAP, BI-
LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS LITIGATION**

Master Docket: Misc. No. 21-1230

MDL No. 3014

This Document Relates to: *All Actions*

**STIPULATED ADDENDUM A TO PRE-TRIAL ORDER #18 – STIPULATED ORDER
REGARDING DISCOVERY OF DOCUMENTS AND ELECTRONICALLY STORED
INFORMATION**

This Addendum A to the Stipulated Order Regarding Discovery of Documents and Electronically Stored Information (“ESI”) (Pre-trial Order #18) sets forth timelines with regard to the Search and Identification provisions therein (Section IV).

1. Non-Custodial Discovery.

a) On June 29, 2022, Defendants disclosed an initial list of eight non-custodial sources of data.

b) The Parties have reached an agreement on an initial set of the non-custodial sources (Design History Files, Regulatory Files and Complaint Files related to the Recalled Devices) which Defendants will prioritize for production. For those prioritized sources identified above, Defendants will begin a rolling production from the identified non-custodial data sources by **August 30, 2022**. Defendants’ production will indicate what entity these files are coming from.

c) The Parties have met and conferred both via email and during weekly meet and confer sessions regarding the sources of data and information and format of the data within these sources. The Parties will raise disputes to the Special Master regarding the

information and formatting of the data as well as production of the data in these noncustodial sources by **October 3, 2022**.

2. Custodial Discovery.

a) **Custodians.**

i. Defendants provided an initial list of custodians to Plaintiffs on May 16, 2022. Since that time, Plaintiffs have reviewed this initial list and the documents produced to date, including organization charts, and have suggested both additional custodians and priority custodians with potentially responsive or relevant information. The Parties will continue to regularly meet and confer in good faith regarding custodians, including for custodians for the pre-2014 time period and custodians for targeted searches.

ii. The Parties have agreed to a priority set of custodians. By **September 12, 2022**, the Parties will reach agreement on an initial set of custodians or raise any disputes with the Special Master.

b) **Search Terms.**

i. On June 9, 2022, Defendants provided their proposed search terms to Plaintiffs, and Plaintiffs responded with additional proposed search terms on July 20, 2022. Defendants ran all proposed terms against “Microsoft 365” custodial files which includes Outlook mailbox (email and Teams chats) and OneDrive data collected as of July 20, 2022 and, on July 28, 2022, provided reports of the resulting search term hits. The custodial files which the search terms were run against were limited to the dates of January 1, 2014 through the

date of collection. The Parties will continue to regularly meet and confer in good faith regarding search terms.

ii. By **September 12, 2022**, the Parties will reach agreement on an initial set of search terms or raise any disputes with the Special Master.

c) **Production of Custodial Data.**

i. By **September 30, 2022**, Defendants will endeavor to begin a rolling production of the Microsoft 365 custodial data described above, beginning with the prioritized custodians. If Defendants, in good faith, come to determine that this start date is not feasible, they will advise Plaintiffs and meet and confer accordingly. Defendants will update Plaintiffs and the Special Master as to the status of production of custodial documents on the first Monday meeting of the month. And at that time the Parties can raise disputes accordingly.

ii. By **September 15, 2022**, Defendants will identify custodial sources other than Microsoft 365 (which already includes email data), if any, which will be collected and searched as part of its search protocol.

d) **Search Methodology and Validation.**

i. The Parties are meeting and conferring regarding a Stipulated Order about search methodology and validation. The Parties will reach agreement and/or raise disputes with the Special Master by **September 26, 2022**.

3. Preservation.

a) As detailed in Section 1, Defendants have identified and disclosed those systems of record that they presently believe contain information responsive to Plaintiffs'

discovery requests, and the claims and defenses in this matter. Defendants are not presently aware of any additional systems that contain responsive noncustodial ESI. Consistent with the ESI order, should Defendants learn of additional noncustodial ESI sources not previously identified that contain relevant information, they will advise Plaintiffs of those sources and Defendants' position as to whether any such sources need to be produced and/or preserved.

b) By **September 15, 2022**, Defendants will provide "Preservation Information" consistent with the United State District Court Western District of Pennsylvania Local Rule and accompanying Appendix LCvR 26.2.C-CHECKLIST.

c) The Parties will meet and confer and raise any disputes regarding Defendants' disclosure of Preservation Information to the Special Master by **September 26, 2022**.

4. Plaintiffs' Informal Information Requests Concerning ESI.

a) On March 31, 2022, Plaintiffs provided Defendants with "Plaintiffs' Informal Information Requests Concerning Electronically Stored Documents" ("Plaintiffs' Informal Discovery Requests on ESI"). The Parties' meet and confer process described above has included discussions related to Plaintiffs' Informal Discovery Requests on ESI.

b) By **September 15, 2022**, Defendants will provide a written response to Plaintiffs' Informal Discovery Requests.

c) The Parties will thereafter continue to meet and confer in good faith regarding Plaintiffs' informal information requests on ESI.

d) By **September 26, 2022**, the Parties will raise any disputes concerning Plaintiffs' Informal Discovery Requests with the Special Master.

5. **Time Period.** Plaintiffs' position is that the relevant time period for discovery in this matter is from January 1, 2005 to present. Defendants' position is the relevant time period for discovery is generally from January 1, 2014 to present. And as such, to date, search terms and custodians have been negotiated based on the understanding that the Parties will revisit start date. The Parties continue to meet and confer regarding the start date for certain non-custodial ESI sources and custodians and will raise any disputes with the Special Master regarding the time period for any particular source of information on the first regularly scheduled Monday meeting with the Special Discovery Master of the month.

6. **Monthly Updates.** The Parties will update the Court at each monthly status conference about the status of discovery.

7. **Reservation of Rights.** This Addendum anticipates the Parties will continue to meet and confer on discovery and production. Parties reserve all rights.

IT IS SO ORDERED.

Dated: August 31, 2022

/s/ JOY FLOWERS CONTI
Joy Flowers Conti
Senior United States District Judge

SO STIPULATED AND AGREED.

DATED: August 29, 2022

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