**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

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| HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,<br><br>*Plaintiff*,<br><br>vs.<br><br>NEUROMONITORING ASSOCIATES, LLC, PHYSICIAN OVERSIGHT, LLC, and MONITORING ASSOCIATES LLC,<br><br>*Defendants*. | Case No. 5:26-cv-00022-RWS-JBB |

**JOINT CONFERENCE REPORT**

Pursuant to the Court's Order dated April 28, 2026 (ECF No. 31), Plaintiff Health Care Service Corporation, a mutual legal reserve company ("HCSC" or "Plaintiff") and Defendants Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC (together, "Defendants")[1] hereby jointly submit this Joint Report on Rule 26(f) Conference with respect to the matters set out in the Court's April 28, 2026 Order setting a telephone scheduling conference.

The parties also submit the attached **proposed Docket Control Order (Ex. A – Clean Copy; Ex. B – Redline Copy) and proposed Discovery Order (Ex. C. – Clean Copy; Ex. D – Redline Copy)**. The parties are in agreement on the Docket Control Order, but have a disagreement as to Section 4 of the Discovery Order, noted below. Accordingly, the proposed Discovery Order contains the parties' proposals on that disagreement. The parties are also preparing a proposed

[1] Defendants subject to and with full reservation, without any waiver, of all of their arguments in their pending Motions to Dismiss and Motion to Stay Discovery and related briefing and submissions.

HIPAA Qualified Protective Order and proposed E-Discovery Order, which will be submitted in due course.

**A. "State where and when the conference among the parties required by Federal Rule of Civil Procedure 26(f) was held, identify the counsel who attended for each party, including name, address, bar number, phone numbers, and email address, and, if applicable, identify the counsel and any unrepresented person(s) who will appear at the Scheduling Conference on behalf of the parties."**

The Rule 26(f) Conference was held on May 12, 2026, via Zoom meeting. Attending for Plaintiff were counsel (who will also appear at the Scheduling Conference on behalf of Plaintiff, if the conference occurs):

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*Admitted *pro hac vice* **Motion for *pro hac vice* admission forthcoming

Attending for Defendants were counsel (who will also appear at the Scheduling Conference on behalf of Defendants, if the conference occurs):

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**B. "List the correct names of the parties to this action."**

The Plaintiff is Health Care Service Corporation, A Mutual Legal Reserve Company. The Defendants are Neuromonitoring Associates, LLC; Physician Oversight, LLC; and Monitoring Associates LLC.

**C. "List any related cases pending in any state or federal court. Include case numbers, the courts, and how they are related."**

None.

**D. "Briefly describe in 3 paragraphs or less: (a) what this case is about and (b) each claim or defense."**

*Plaintiff's Statement:*

Plaintiff alleges that Defendants engaged in two different types of healthcare fraud schemes involving intraoperative neuromonitoring ("IOM") services. First, Plaintiff claims Defendants paid illegal kickbacks to Texas surgeons in exchange for referrals, then billed Plaintiff for those services while concealing the financial arrangements. Specifically, Plaintiff alleges that Defendants bought surgeon-owned LLCs tied to prior IOM arrangements, paid kickbacks to acquire those LLCs, and continued funneling portions of collections back to surgeons, and used those payments to lock in referral business and expand market share. Plaintiff alleges that it paid millions on claims it would have denied had it known of the kickbacks.

Second, Plaintiff alleges Defendants committed fraud and other tort claims by knowingly submitting thousands of ineligible claims, items, or services into the federal IDR process under the federal No Surprises Act ("NSA") arbitration system. Plaintiff alleges that in initiating IDR processes under the NSA, Defendants knowingly misrepresented facts such as plan type, eligibility

under federal law, timing requirements, and whether state law governed the dispute, and that Defendants used their misrepresentations to obtain IDR awards on claims, items, or services that were ineligible for NSA IDR processes.

Plaintiff brings claims for fraud, negligent misrepresentation, money had and received, declaratory and injunctive relief, civil RICO violations, and vacatur of arbitration awards obtained through alleged fraud, and seeks compensatory and punitive damages, treble damages under RICO, repayment of allegedly improper claims and IDR awards, attorneys' fees, and declaratory and injunctive relief barring Defendants from continuing the alleged schemes. Because Defendants have not yet answered Plaintiff's Complaint (and instead have moved to dismiss), Plaintiff does not know what defenses, if any, Defendants intend to assert.

*Defendants' Statement:*

This is another case in a wave of litigation by Plaintiff and its related Blue Cross entities seeking to overturn arbitrations it lost under the No Surprises Act. Unhappy with its results during the IDR process, Plaintiff and its related Blue Cross entities have launched these collateral attacks in various federal district courts (four in this Court alone).[2] Federal law and Fifth Circuit precedent, however, hold that "an IDR award 'shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)' of the Federal Arbitration Act ('FAA')." *Guardian Flight, L.L.C. v. Health Care Serv. Corp*., 140 F.4th 271, 274 (5th Cir. 2025), cert. denied, No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) ("*Guardian Flight I*") (quoting 42 U.S.C. §§ 300ggg-112(b)(5)(d), 300ggg-111(c)(5)(E)). And the complaint not only fails to plead

[2] *See Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, 5:25-cv-00132-RWS (E.D. Tex. 2025); *Health Care Serv. Corp. v. Zotec Partners, LLC*, 5:25-cv-00186-RWS (E.D. Tex. 2025); *Paris Emergency Ctr. LLC v. Blue Cross Blue Shield of Tex.*, 5:24-cv-00002-RWS (E.D. Tex. 2024); *Blue Cross Blue Shield Healthcare Plan of Ga. Inc. v HaloMD, Inc.*, 1:25-cv-02919-TWT (N.D. Ga. 2025); *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD, LLC*, 8:25-cv-01467-KES (C.D. Cal. 2025); *Cmty Ins. Co. v. HaloMD, LLC*, 1:25-cv-00388-MWM (S.D. Ohio 2025); *Anthem Health Plans of Va., Inc. v. AGS Health, Inc.*, 7:25-cv-00804-RSB-CKM (W.D. Va. 2025).

facts to meet any of these four scenarios for review under the FAA, it includes allegations that categorically rule them out. It is therefore unsurprising that the first three courts to have been presented with this theory—including the attempt to circumvent the FAA by bringing vacatur, RICO, fraud, and negligent misrepresentation—have decisively rejected it. *See Anthem*, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026); Order, *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-1343 (M.D. Fla. Apr. 16, 2026), Dkt. 105; Memorandum, *UnitedHealthcare of Pa., Inc. v. Northstar Anesthesia of Pa., LLC*, No. 27-7187 (E.D. Pa. Apr. 28, 2026), Dkt. 43. That emerging consensus underscores the failure of Plaintiffs' claims. And even if the Court did have subject matter jurisdiction to review these claims (it does not), they would nonetheless fail because Defendants are immune from liability arising from arbitration activity under the *Noerr-Pennington* doctrine.

The Plaintiff has also included an inchoate attack on the IOM industry in this case. But the Plaintiff's 'information and belief' theory of liability based on purported kickbacks fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) and the heightened pleading standard of Federal Rule of Civil Procedure 9(b). Plaintiff invokes common-law fraud and RICO, but does not identify with specificity facts or statements that show fraud. Indeed, its allegations are impermissibly made upon information and belief and therefore do not include facts sufficient to state a claim under the required pleading standards. Under Fifth Circuit precedent, "Rule 9(b) has long played [a] screening function, standing as a gatekeeper to discovery, a tool to weed out meritless fraud claims sooner than later[,]" and courts in this circuit must apply "Rule 9(b) to fraud complaints with bite and without apology[.]" *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 185–86 (5th Cir. 2009) (quotations omitted). Plaintiff also relies on several Texas statutes that it claims prohibit the kickback scheme it alleges, but these statutes lack a private right of action.

**E. "Specify the basis of federal jurisdiction."**

The Plaintiff asserts that the Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties, and the amount in controversy exceeds $75,000, exclusive of interests and costs. The Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under federal law. Specifically, Plaintiff asserts claims under The Racketeer Influenced and Corrupt Organizations Act ("RICO"), *see* 18 U.S.C. § 1961, *et seq.*; *see also* 18 U.S.C. § 1964(a) ("The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter."). Finally, the Court has subject-matter jurisdiction over Plaintiff's other claims under 28 U.S.C. § 1367, as those claims are so related to Plaintiff's federal statutory causes of action that they form part of the same case or controversy.

The Defendants dispute subject-matter jurisdiction as to several aspects of the case, for the reasons identified in the next section.

**F. "Identify the parties who disagree with Plaintiff's jurisdictional allegations and state the reasons for disagreement."**

Defendants Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates LLC disagree with Plaintiff's jurisdictional allegations.

First, diversity jurisdiction under 28 U.S.C. § 1332(a) does not exist because Plaintiff and at least one defendant are citizens of the same state. HCSC is a citizen of Illinois because it is incorporated and has its principal place of business there. *See* Compl. ¶ 13. All the Defendants in this action are LLCs whose sole member is a parent LLC; that parent LLC's sole member is another LLC, which is owned by several members, at least one of which is believed to be an Illinois citizen such that diversity is defeated. *See* Def.'s R. 7.1 Disclosure Statement, Dkt. 26 ¶ 3.

Second, while the Defendants agree that there is generally federal-question jurisdiction over requests for vacatur under the NSA and over RICO claims, Congress has expressly stripped the Court of jurisdiction to review IDR awards, except in circumstances not present here. The Fifth Circuit has held that "the NSA explicitly bars judicial review of those awards, except with respect to four scenarios incorporated from the FAA." *Guardian Flight I, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613,at 620 (5th Cir. 2025) ("*Guardian Flight II*"). Similar cases have been dismissed for lack of subject-matter jurisdiction. (*See Anthem*, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026); Order, Memorandum, *UnitedHealthcare of Pa., Inc. v. Northstar Anesthesia of Pa., LLC*, No. 27-7187 (E.D. Pa. Apr. 28, 2026), Dkt. 43). The Complaint not only fails to plead facts to meet any of these four scenarios for review under the FAA, it includes allegations that categorically rule them out. And because Plaintiff's RICO, fraud and negligent misrepresentation claims all require review of these IDR awards, the Court lacks subject-matter jurisdiction over these claims.

**G. "List anticipated additional parties that may be included, when they might be added and by whom."**

At this time, neither party anticipates additional parties being joined in this action.

**H. "State whether the parties are exempt from initial disclosures under Rule 26(a)(1)(B)."**

No, the parties are not exempt from initial disclosures under Rule 26(a)(1)(B).

**I. "If the parties disagree on any part of the discovery plan or case schedule, describe the opposing views."**

Defendants have filed motions to dismiss the case for lack of subject-matter jurisdiction, under Rule 12(b)(6), and to enforce the requirements of Rule 9(b), as well as a separate motion to stay discovery. Plaintiff opposes both.

Subject to those motions, the parties agree on the case schedule as set forth in the proposed Docket Control Order. The parties also agree on nearly all of the proposed Discovery Order, except with respect to Section 4. Within that section, the parties disagree as to number of hours needed for non-party depositions. Plaintiff proposes thirty (30) hours are needed, given the kickback allegations and multitude of surgeons who may need to be deposed. Defendants disagree, and assert that the ten (10) hour default in the Court's template order is sufficient.

**J. "State whether the parties request entry of a Protective Order or E-Discovery Order to govern this case."**

Yes, if the case proceeds to discovery (i.e., if the Defendants' motion to stay discovery and motion to dismiss are denied), the Defendants join the Plaintiff's request that the Court enter a HIPAA-Qualified Protective Order and E-Discovery Order. The parties are still discussing certain components of those orders, but will submit them for the Court's review and approval in due course.

**K. "State the progress made toward settlement, if any, and the present status of settlement negotiations."**

Given the posture of this case, the parties have not yet engaged in settlement discussions.

**L. "If the parties have already agreed on a specific mediator, state the name and address of the mediator and at what stage of litigation mediation would be most appropriate."**

The parties have not discussed, or agreed upon, a mediator.

**M. "State whether a jury demand has been made and if it was made on time."**

Plaintiff has demanded a jury trial – that demand was made with the filing of its Complaint, and is timely. (*See* ECF No. 1 at 67 ("Pursuant to Rule 28 of the Federal Rules of Civil Procedure, Plaintiff HCSC demands a trial by jury on all claims and issues so triable.")). The Defendants have not yet answered the Complaint or served a jury demand, in light of their pending motion to dismiss.

**N. "Specify the approximate number of hours each party will need to present evidence and cross-examine witnesses in the trial of this case."**

Presently, the Plaintiff estimates 10 days for trial, with each "side" utilizing approximately 20 hours to present its case and cross-examine witnesses (exclusive of voir dire, opening and closing statements).

The Defendants state that because the Plaintiff has refused to identify or provide a list of the IDR arbitrations it seeks to challenge in this case, the Defendants cannot provide a meaningful estimate for the length of trial or number of witnesses. For example, in its Complaint, the Plaintiff asserts that "Defendants have wrongly obtained thousands of" IDR awards. Complaint ¶ 10 (Dkt. 1). If this matter is to involve relitigation of thousands of arbitrations, trial will be substantially longer than the estimate above. If the Plaintiff intends to relitigate only the IDR arbitrations identified in the Complaint, then the estimate provided in the paragraph above is reasonable from the Defendants' perspective.

**O. "List all pending motions."**

There are two motions that have been filed with the Court. Briefing for each is ongoing:

- Defendants' Motion to Dismiss and Request for Judicial Notice (ECF No. 25)
- Defendants' Motion to Stay Discovery Pending Resolution of Defendants' Rule 12(b)(1) and 12(b)(6) Motion to Dismiss (ECF No. 32)

**P. "Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the Court at the Scheduling Conference . . . [and] advise as to whether [the parties] think the telephone scheduling conference is warranted or whether the Court can enter the parties' proposals without having the scheduling conference."**

The Defendants assert that the pending motion to stay discovery (based on a motion to dismiss for lack of subject-matter jurisdiction) is a matter that requires special attention from the Court prior to setting a discovery schedule, although the Defendants note that the motion to stay

will not be fully briefed by the current date set for the scheduling conference. The Plaintiff opposes this motion and does not consider Defendants' motion to be a matter that requires special attention at a scheduling conference. Plaintiff submits that a scheduling conference is not warranted, and that the Court can resolve the only dispute between the parties—referenced above in Section I—without such a conference.

**Q. Per ECF No. 31, p. 3, the parties' statements regarding "good cause" to modify otherwise mandatory deadlines set forth therein.**

Plaintiff and Defendants believe additional time would be needed, beyond that allotted under the Court's mandatory deadlines otherwise set forth at ECF No. 31, p. 3, to adequately conduct fact and expert discovery, brief summary judgment and Daubert motions, and prepare their claims and defenses for trial. Federal Rule of Civil Procedure 16(b) allows the Court to modify a scheduling order upon a showing of good cause. Fed. R. Civ. P. 16(b)(4). "A trial court has broad discretion in allowing scheduling order modifications." *AdvanceMe, Inc. v. AmeriMerchant LLC*, No. 6:06-CV-82, 2007 WL 9723977, at *2 (E.D. Tex. July 5, 2007).

Good cause exists here. Specifically, as stated above, the Parties believe they require additional time in discovery and to prepare their respective claims and defenses for trial. Moreover, the request is not made for the purpose of delay or any improper means.

Dated: May 12, 2026

By: /s/Jamie R. Kurtz

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**Motion for *pro hac vic* admission forthcoming

*Attorneys for Plaintiff Health Care Service Corporation*

Dated: May 12, 2026

By: /s/Matthew L. Knowles

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**CERTIFICATE OF SERVICE**

I, Joseph T. Janochoski, hereby certify that on May 12, 2026, a true and correct copy of the foregoing, and its exhibits, was served via e-mail through the Eastern District of Texas's CM/ECF system.

*s/Joseph T. Janochoski*
Joseph T. Janochoski

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

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| HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,<br>*Plaintiff*,<br>vs.<br>NEUROMONITORING ASSOCIATES, LLC, PHYSICIAN OVERSIGHT, LLC, and MONITORING ASSOCIATES LLC,<br>*Defendants*. | Case No. 5:26-cv-00022-RWS-JBB |

**DOCKET CONTROL ORDER**[1]

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

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| **3 DAYS after conclusion of Trial** | Parties to file **Motion to Seal Trial Exhibits**, if they wish to seal any highly confidential exhibits.<br><br>**EXHIBITS: See Order below regarding exhibits.** |
| **December 4, 2028 9:00am** | **9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Texarkana, Texas.**<br><br>For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection. |
| **December 4, 2028 9:00am** | **9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Texarkana, Texas.** |
| **November 13, 2028 10:00am** | **10:00 a.m. PRETRIAL CONFERENCE before Magistrate Judge J. Boone Baxter, Texarkana, Texas.**<br><br>All pending motions will be heard.<br>Lead trial counsel must attend the pretrial conference. |

[1] Defendants join in this motion and submit this proposed order, subject to and with full reservation, without any waiver, of all of their arguments in their pending Motions to Dismiss and Motion to Stay Discovery and related briefing and submissions.

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| **November 3, 2028** | **File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.** |
| **November 3, 2028** | **File Responses to Motions *in Limine*.** |
| **October 20, 2028** | **File Motions *in Limine* and pretrial objections**<br><br>The parties are **ORDERED** to meet and confer to resolve any disputes before filing any motion *in limine* or objection to pretrial disclosures. |
| **October 13, 2028** | **File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials**.<br><br>Parties shall use the pretrial order form on Judge Schroeder's website.<br><br>Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench. |
| **October 13, 2028** | **Deadline to consent to proceed before the Magistrate Judge for <u>all remaining proceedings</u> in this case, including a jury or nonjury trial, the entry of a final judgment, and all post-trial proceedings. 28 U.S.C. § 636(c)(1).**<br><br>If all parties agree to consent to the Magistrate Judge to handle all remaining proceedings (including trial, post-trial, and the entry of final judgment), the parties are to jointly or separately file Local Form, modifying AO 85 (Notice, Consent, and Reference of a Civil Action to a Magistrate Judge for <u>All Proceedings</u>) located on Judge Baxter's website. The form should be electronically filed using the event "Notice Regarding Consent to Proceed Before Magistrate Judge."<br><br>Each party may withhold consent without any adverse consequence. 28 U.S.C. § 636(c)(2). |
| **October 6, 2028** | **Exchange Objections to Rebuttal Deposition Testimony**. |

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| **October 6, 2028** | **Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due.**<br><br>If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice and email Shelly Holmes at shelly_holmes@txed.uscourts.gov. |
| **September 15, 2028** | **Exchange Rebuttal Designations and Objections to Deposition Testimony**.<br><br>For rebuttal designations, cross examination line and page numbers to be included. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections. |
| **September 8, 2028** | **Deadline to mediate.**<br><br>For cases in which the parties have agreed, or been ordered, to mediate, the parties shall complete mediation no later than five weeks before the pretrial conference or seek leave of Court for additional time in which to mediate. |
| **September 8, 2028** | **Exchange Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List)**.<br><br>Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered. |

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| **April 14, 2028** | **Any Remaining Dispositive Motions due from all parties and any other motions that may require a hearing (including *Daubert* motions).**<br><br>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances.<br><br>*The parties may move to extend the dispositive motions deadline—without the need to show good cause—to the extent they *also* agree to a modified briefing schedule that ensures briefing is completed on the same date as previously contemplated. Any requested extension that requires compressing the time between completed briefing and the pretrial conference, or moving the pretrial conference, will require a showing of good cause.<br><br>For each motion filed, the moving party SHALL provide the Court with one (1) copy of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in a three-ring binder appropriately tabbed. All documents shall be double-sided and must include the CM/ECF header. These copies shall be delivered to Judge Baxter's chambers in Texarkana as soon as briefing has completed.<br><br>**Respond to Amended Pleadings**. |
| **March 24, 2028** | **Parties to Identify Rebuttal Trial Witnesses**. |
| **March 10, 2028** | **Parties to Identify Trial Witnesses; Amend Pleadings**.<br><br>It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. |
| **February 25, 2028** | **Expert Discovery Deadline**. |
| **February 11, 2028** | **Expert Discovery Document Production Deadline**. |

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| **February 4, 2028** | **Parties designate rebuttal expert witnesses, rebuttal expert witness reports due**. Refer to Local Rules for required information.<br><br>If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances. |
| **December 17, 2027** | **Parties with burden of proof designate expert witnesses. Expert witness reports due**. Refer to Local Rules for required information. |
| **November 15, 2027** | **Fact Discovery Deadline** |
| **October 15, 2027** | **Substantial Completion of Fact Discovery Document Production.** |
| **September 11, 2026** | **Defendant shall join additional parties**. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.<br><br>Defendant shall assert any counterclaims. After this deadline, leave of Court must be obtained to assert any counterclaims. |
| **June 16, 2026** | **Deadline to Notify the Court regarding Mediation.**<br><br>Parties are encouraged, but not required, to mediate cases. If the parties agree to mediate, they shall jointly file a motion with a proposed order attached. The motion shall indicate whether the parties agree upon a mediator and a mediation deadline. If the parties cannot agree on a mediator, they may request the Court appoint a mediator. The parties shall confirm the mediator's availability in light of the mediation deadline, which shall be no later than five weeks before the pretrial conference. If the parties do not agree to mediate, they shall file a notice so indicating. |

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| **June 16, 2026** | **Deadline to consent to proceed before the Magistrate Judge for all <u>pretrial motions</u>, including dispositive motions. 28 U.S.C. § 636(c)**<br><br>This case is referred to the Magistrate Judge for all pretrial proceedings, and as such, the parties are afforded the objection procedures described in Fed. R. Civ. P. 72(a) and (b) and Local Rule CV-72(b) and (c). Upon consent of all parties, these objection procedures may be waived by consenting to the Magistrate Judge to hear and determine <u>all pretrial motions</u>. Any party is free to withhold consent without any adverse consequence and the objection procedures will remain in place. 28 U.S.C. § 636(c)(2).<br><br>If all parties agree to consent to the Magistrate Judge to hear and determine all pretrial motions (thus foregoing the need for Report and Recommendations for dispositive motions), the parties are to **jointly** file Local Form, modifying AO 85A (Notice, Consent, and Reference of <u>All Pretrial Motions</u> to a Magistrate Judge) located on Judge Baxter's website. The form should be electronically filed using the event "Notice Regarding Consent to Proceed Before Magistrate Judge." The case will remain assigned to the District Judge for trial and all post-trial proceedings.<br><br>*If the parties wish to consent to the Magistrate Judge for all proceedings, including trial, the entry of final judgment, and all post-trial proceedings in addition to pretrial motions, they are to file Local Form, modifying AO 85 (Notice, Consent, and Reference of a Civil Action to a Magistrate Judge for <u>All Proceedings</u>).* |
| **June 2, 2026** | Plaintiff shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties. |
| *Parties' estimated number of trial days* | **EXPECTED LENGTH OF TRIAL:** Plaintiff estimates ten (10) trial days. The Defendants state that because the Plaintiff has refused to identify or provide a list of the IDR arbitrations it seeks to challenge in this case, the Defendants cannot provide a meaningful estimate for the length of trial or number of witnesses. For example, in its Complaint, the Plaintiff asserts that "Defendants have wrongly obtained thousands of" IDR awards. Complaint ¶ 10 (Dkt. 1). If this matter is to involve relitigation of thousands of arbitrations, trial will be substantially longer than the estimate above. If the Plaintiff intends to relitigate only the IDR arbitrations identified in the Complaint, then the estimate provided by Plaintiff is reasonable from the Defendants' perspective. |

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that "[a] party's failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion."

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto after discussing the issue with the other party or parties. The Court will consider requests to appear remotely, if agreed to by all parties.

**Other Limitations**

(a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
  (i) The fact that there are motions for summary judgment or motions to dismiss;
  (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

(b) Amendments to the Docket Control Order ("DCO"): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.

(c) Motions *in Limine*: Each side is limited to one (1) motion *in limine* addressing no more than ten (10) disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create the proverbial "skunk in the jury box," e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. Rulings on motions *in limine* do not exclude evidence, but prohibit the

party from offering the disputed testimony prior to obtaining an evidentiary ruling during trial.

(d) Exhibits: Each side is limited to designating 250 exhibits for trial absent a showing of good cause. The parties shall use the exhibit list sample form on Judge Schroeder's website.

(e) Deposition Designations: Each side is limited to designating no more than ten (10) hours of deposition testimony for use at trial absent a showing of good cause. As trial approaches, if either side needs to designate more than ten (10) hours, the party may file a motion for leave and show good cause. All depositions to be read into evidence as part of the parties' case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.

(f) Witness Lists: The parties shall use the witness list sample form on Judge Schroeder's website.

**ORDER REGARDING EXHIBITS, EXHIBIT LISTS AND WITNESS LISTS:**

A. On the first day of trial, each party is required to have:

(1) One copy of their respective original exhibits on hand. Each exhibit shall be properly labeled with the following information: Identified as either Plaintiff's or Defendant's Exhibit, the Exhibit Number and the Case Number.

(2) Three hard copies of each party's exhibit list and witness list on hand.

(3) One copy of all exhibits on USB Flash Drive(s) or portable hard drive(s). This shall be tendered to the Courtroom Deputy at the beginning of trial.

B. The parties shall follow the process below to admit exhibits.

(1) *On the first day of trial*, each party shall tender a preadmitted list of exhibits it plans to admit into evidence. This list shall include all exhibits which are NOT objected to or to which the Court has already overruled an objection. To the extent there are exhibits with outstanding objections for which the parties need a ruling from the Court, those exhibits should be separately included on the list and designated accordingly to reflect a pending objection. Parties shall entitle the list "[Plaintiff's/Defendant's] List of Preadmitted Exhibits." If, during the course of the day's testimony, a party wishes to offer an objected exhibit into evidence, the party may move for admission at the time it wishes to use that exhibit with a witness. The Court will then hear the opposing party's objection and will rule on the objection at that time.

(2) *On each subsequent day of trial*, the Court will commence by formally admitting all of the exhibits that were either unobjected to or allowed over objection and used during the previous day's trial. The Court will ask for these exhibits to be read into the record and formally admitted into evidence at the beginning of that trial day. These will be the exhibits deemed admitted at trial. The parties shall keep a separate running list of all exhibits admitted throughout the course of trial.

(3) *At the conclusion of evidence*, each party shall read into the record any exhibit that was used but not previously admitted during the course of trial and then tender its final list of every admitted exhibit, entitled "[Plaintiff's/Defendant's] Final List of All Admitted Exhibits." To the extent there are exhibits that were not admitted during the course of trial, but for which there is agreement that they should be provided to the jury, the parties must inform the Court of those exhibits at the conclusion of evidence. The Court will then determine whether those exhibits will be allowed into the jury room for deliberations.

C. At the conclusion of evidence, each party shall be responsible for pulling those exhibits admitted at trial and shall tender those to the Courtroom Deputy, who will verify the exhibits and tender them to the jury for their deliberations. One representative from each side shall meet with the Courtroom Deputy to verify the exhibit list.

D. At the conclusion of trial, all boxes of exhibits shall be returned to the respective parties and the parties are instructed to remove these exhibits from the courtroom.

E. Within five business days of the conclusion of trial, each party shall submit to the Courtroom Deputy:

(1) A Final Exhibit List of Exhibits Admitted During Trial in Word format.
(2) Two CDs containing admitted unsealed trial exhibits in PDF format. If the Court ordered any exhibits sealed during trial, the Sealed Exhibits shall be submitted on a separate CD. If tangible or over-sized exhibits were admitted, such exhibits shall be substituted with a photograph in PDF format.
(3) A disk containing the transcripts of Video Depositions played during trial, along with a copy of the actual video deposition.

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

| | |
|---|---|
| HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,<br>*Plaintiff*,<br>vs.<br>NEUROMONITORING ASSOCIATES, LLC, PHYSICIAN OVERSIGHT, LLC, and MONITORING ASSOCIATES LLC,<br>*Defendants*. | Case No. 5:26-cv-00022-RWS-JBB |

**DOCKET CONTROL ORDER**[1]

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

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| **3 DAYS after conclusion of Trial** | Parties to file **Motion to Seal Trial Exhibits**, if they wish to seal any highly confidential exhibits.<br><br>**EXHIBITS: See Order below regarding exhibits.** |
| **December 4, 2028 9:00am** | **9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, Texarkana, Texas.**<br><br>For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection. |
| **December 4, 2028 9:00am** | **9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, Texarkana, Texas.** |
| **November 13, 2028 10:00am** | **10:00 a.m. PRETRIAL CONFERENCE before Magistrate Judge J. Boone Baxter, Texarkana, Texas.**<br><br>All pending motions will be heard.<br>Lead trial counsel must attend the pretrial conference. |

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[1] Defendants join in this motion and submit this proposed order, subject to and with full reservation, without any waiver, of all of their arguments in their pending Motions to Dismiss and Motion to Stay Discovery and related briefing and submissions.

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| November 3, 2028 | **File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.** |
| November 3, 2028 | **File Responses to Motions *in Limine*.** |
| October 20, 2028 | **File Motions *in Limine* and pretrial objections**<br><br>The parties are **ORDERED** to meet and confer to resolve any disputes before filing any motion *in limine* or objection to pretrial disclosures. |
| October 13, 2028 | **File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials**.<br><br>Parties shall use the pretrial order form on Judge Schroeder's website.<br><br>Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench. |
| October 13, 2028 | **Deadline to consent to proceed before the Magistrate Judge for all remaining proceedings in this case, including a jury or nonjury trial, the entry of a final judgment, and all post-trial proceedings. 28 U.S.C. § 636(c)(1).**<br><br>If all parties agree to consent to the Magistrate Judge to handle all remaining proceedings (including trial, post-trial, and the entry of final judgment), the parties are to jointly or separately file Local Form, modifying AO 85 (Notice, Consent, and Reference of a Civil Action to a Magistrate Judge for All Proceedings) located on Judge Baxter's website. The form should be electronically filed using the event "Notice Regarding Consent to Proceed Before Magistrate Judge."<br><br>Each party may withhold consent without any adverse consequence. 28 U.S.C. § 636(c)(2). |
| October 6, 2028 | **Exchange Objections to Rebuttal Deposition Testimony**. |

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| October 6, 2028 | **Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due.**<br><br>If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice and email Shelly Holmes at shelly_holmes@txed.uscourts.gov. |
| September 15, 2028 | **Exchange Rebuttal Designations and Objections to Deposition Testimony**.<br><br>For rebuttal designations, cross examination line and page numbers to be included. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections. |
| September 8, 2028 | **Deadline to mediate.**<br><br>For cases in which the parties have agreed, or been ordered, to mediate, the parties shall complete mediation no later than five weeks before the pretrial conference or seek leave of Court for additional time in which to mediate. |
| September 8, 2028 | **Exchange Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List)**.<br><br>Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered. |

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| April 14, 2028 | **Any Remaining Dispositive Motions due from all parties and any other motions that may require a hearing (including *Daubert* motions).**<br><br>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances.<br><br>*The parties may move to extend the dispositive motions deadline—without the need to show good cause—to the extent they *also* agree to a modified briefing schedule that ensures briefing is completed on the same date as previously contemplated. Any requested extension that requires compressing the time between completed briefing and the pretrial conference, or moving the pretrial conference, will require a showing of good cause.<br><br>For each motion filed, the moving party SHALL provide the Court with one (1) copy of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in a three-ring binder appropriately tabbed. All documents shall be double-sided and must include the CM/ECF header. These copies shall be delivered to Judge Baxter's chambers in Texarkana as soon as briefing has completed.<br><br>**Respond to Amended Pleadings**. |
| March 24, 2028 | **Parties to Identify Rebuttal Trial Witnesses**. |
| March 10, 2028 | **Parties to Identify Trial Witnesses; Amend Pleadings**.<br><br>It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. |
| February 25, 2028 | **Expert Discovery Deadline**. |
| February 11, 2028 | **Expert Discovery Document Production Deadline.** |

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| February 4, 2028 | **Parties designate rebuttal expert witnesses, rebuttal expert witness reports due**. Refer to Local Rules for required information.<br><br>If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances. |
| December 17, 2027 | **Parties with burden of proof designate expert witnesses. Expert witness reports due**. Refer to Local Rules for required information. |
| November 15, 2027 | **Fact Discovery Deadline** |
| October 15, 2027 | **Substantial Completion of Fact Discovery Document Production.** |
| September 11, 2026 | **Defendant shall join additional parties**. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.<br><br>Defendant shall assert any counterclaims. After this deadline, leave of Court must be obtained to assert any counterclaims. |
| June 16, 2026 | **Deadline to Notify the Court regarding Mediation.**<br><br>Parties are encouraged, but not required, to mediate cases. If the parties agree to mediate, they shall jointly file a motion with a proposed order attached. The motion shall indicate whether the parties agree upon a mediator and a mediation deadline. If the parties cannot agree on a mediator, they may request the Court appoint a mediator. The parties shall confirm the mediator's availability in light of the mediation deadline, which shall be no later than five weeks before the pretrial conference. If the parties do not agree to mediate, they shall file a notice so indicating. |

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| June 16, 2026 | **Deadline to consent to proceed before the Magistrate Judge for all pretrial motions, including dispositive motions. 28 U.S.C. § 636(c)**<br><br>This case is referred to the Magistrate Judge for all pretrial proceedings, and as such, the parties are afforded the objection procedures described in Fed. R. Civ. P. 72(a) and (b) and Local Rule CV-72(b) and (c). Upon consent of all parties, these objection procedures may be waived by consenting to the Magistrate Judge to hear and determine all pretrial motions. Any party is free to withhold consent without any adverse consequence and the objection procedures will remain in place. 28 U.S.C. § 636(c)(2).<br><br>If all parties agree to consent to the Magistrate Judge to hear and determine all pretrial motions (thus foregoing the need for Report and Recommendations for dispositive motions), the parties are to **jointly** file Local Form, modifying AO 85A (Notice, Consent, and Reference of All Pretrial Motions to a Magistrate Judge) located on Judge Baxter's website. The form should be electronically filed using the event "Notice Regarding Consent to Proceed Before Magistrate Judge." The case will remain assigned to the District Judge for trial and all post-trial proceedings.<br><br>*If the parties wish to consent to the Magistrate Judge for all proceedings, including trial, the entry of final judgment, and all post-trial proceedings in addition to pretrial motions, they are to file Local Form, modifying AO 85 (Notice, Consent, and Reference of a Civil Action to a Magistrate Judge for All Proceedings).* |
| June 2, 2026 | Plaintiff shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties. |
| *Parties' estimated number of trial days* | **EXPECTED LENGTH OF TRIAL**: Plaintiff estimates ten (10) trial days. The Defendants state that because the Plaintiff has refused to identify or provide a list of the IDR arbitrations it seeks to challenge in this case, the Defendants cannot provide a meaningful estimate for the length of trial or number of witnesses. For example, in its Complaint, the Plaintiff asserts that "Defendants have wrongly obtained thousands of" IDR awards. Complaint ¶ 10 (Dkt. 1). If this matter is to involve relitigation of thousands of arbitrations, trial will be substantially longer than the estimate above. If the Plaintiff intends to relitigate only the IDR arbitrations identified in the Complaint, then the estimate provided by Plaintiff is reasonable from the Defendants' perspective. |

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In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that "[a] party's failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion."

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto after discussing the issue with the other party or parties. The Court will consider requests to appear remotely, if agreed to by all parties.

**Other Limitations**

(a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
   (i) The fact that there are motions for summary judgment or motions to dismiss;
   (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
   (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

(b) Amendments to the Docket Control Order ("DCO"): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.

(c) Motions *in Limine*: Each side is limited to one (1) motion *in limine* addressing no more than ten (10) disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create the proverbial "skunk in the jury box," e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. Rulings on motions *in limine* do not exclude evidence, but prohibit the

party from offering the disputed testimony prior to obtaining an evidentiary ruling during trial.

(d) Exhibits: Each side is limited to designating 250 exhibits for trial absent a showing of good cause. The parties shall use the exhibit list sample form on Judge Schroeder's website.

(e) Deposition Designations: Each side is limited to designating no more than ten (10) hours of deposition testimony for use at trial absent a showing of good cause. As trial approaches, if either side needs to designate more than ten (10) hours, the party may file a motion for leave and show good cause. All depositions to be read into evidence as part of the parties' case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.

(f) Witness Lists: The parties shall use the witness list sample form on Judge Schroeder's website.

**ORDER REGARDING EXHIBITS, EXHIBIT LISTS AND WITNESS LISTS:**

A. On the first day of trial, each party is required to have:

(1) One copy of their respective original exhibits on hand. Each exhibit shall be properly labeled with the following information: Identified as either Plaintiff's or Defendant's Exhibit, the Exhibit Number and the Case Number.
(2) Three hard copies of each party's exhibit list and witness list on hand.
(3) One copy of all exhibits on USB Flash Drive(s) or portable hard drive(s). This shall be tendered to the Courtroom Deputy at the beginning of trial.

B. The parties shall follow the process below to admit exhibits.

(1) *On the first day of trial*, each party shall tender a preadmitted list of exhibits it plans to admit into evidence. This list shall include all exhibits which are NOT objected to or to which the Court has already overruled an objection. To the extent there are exhibits with outstanding objections for which the parties need a ruling from the Court, those exhibits should be separately included on the list and designated accordingly to reflect a pending objection. Parties shall entitle the list "[Plaintiff's/Defendant's] List of Preadmitted Exhibits." If, during the course of the day's testimony, a party wishes to offer an objected exhibit into evidence, the party may move for admission at the time it wishes to use that exhibit with a witness. The Court will then hear the opposing party's objection and will rule on the objection at that time.

(2) *On each subsequent day of trial*, the Court will commence by formally admitting all of the exhibits that were either unobjected to or allowed over objection and used during the previous day's trial. The Court will ask for these exhibits to be read into the record and formally admitted into evidence at the beginning of that trial day. These will be the exhibits deemed admitted at trial. The parties shall keep a separate running list of all exhibits admitted throughout the course of trial.

(3) *At the conclusion of evidence*, each party shall read into the record any exhibit that was used but not previously admitted during the course of trial and then tender its final list of every admitted exhibit, entitled "[Plaintiff's/Defendant's] Final List of All Admitted Exhibits." To the extent there are exhibits that were not admitted during the course of trial, but for which there is agreement that they should be provided to the jury, the parties must inform the Court of those exhibits at the conclusion of evidence. The Court will then determine whether those exhibits will be allowed into the jury room for deliberations.

C. At the conclusion of evidence, each party shall be responsible for pulling those exhibits admitted at trial and shall tender those to the Courtroom Deputy, who will verify the exhibits and tender them to the jury for their deliberations. One representative from each side shall meet with the Courtroom Deputy to verify the exhibit list.

D. At the conclusion of trial, all boxes of exhibits shall be returned to the respective parties and the parties are instructed to remove these exhibits from the courtroom.

E. Within five business days of the conclusion of trial, each party shall submit to the Courtroom Deputy:

(1) A Final Exhibit List of Exhibits Admitted During Trial in Word format.
(2) Two CDs containing admitted unsealed trial exhibits in PDF format. If the Court ordered any exhibits sealed during trial, the Sealed Exhibits shall be submitted on a separate CD. If tangible or over-sized exhibits were admitted, such exhibits shall be substituted with a photograph in PDF format.
(3) A disk containing the transcripts of Video Depositions played during trial, along with a copy of the actual video deposition.

# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

| HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,<br>*Plaintiff*,<br>vs.<br>NEUROMONITORING ASSOCIATES, LLC, PHYSICIAN OVERSIGHT, LLC, and MONITORING ASSOCIATES LLC,<br>*Defendants*. | Case No. 5:26-cv-00022-RWS-JBB |
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**[PROPOSED] DISCOVERY ORDER**[1]

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Fed. R. Civ. P. 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. **Disclosures.** Except as provided by paragraph 1(j), within thirty (30) days after the Scheduling Conference, each party shall disclose to every other party the following information:

   (a) the correct names of the parties to the lawsuit;

   (b) the name, address, and telephone number of any potential parties;

   (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);

   (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a

[1] Defendants join in and submit this Proposed Discovery Order, subject to and with full reservation, without any waiver, of all of their arguments in their pending Motions to Dismiss and Motion to Stay Discovery and related briefing and submissions.

brief, fair summary of the substance of the information known by any such person;

(e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;

(f) any settlement agreements relevant to the subject matter of this action;

(g) any statement of any party to the litigation, or if applicable, any witness statements described in TEX. R. CIV. P. 192.3(h); and

(h) for any testifying expert, by the date set by the court in the Docket Control Order, each party shall disclose to the other party or parties:

a. the expert's name, address, and telephone number;

b. the subject matter on which the expert will testify;

c. if the witness is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the disclosing party regularly involve giving expert testimony:

1. all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony, except to the extent protected by Fed. R. Civ. P. 26(b)(4); and

2. the disclosures required by Fed. R. Civ. P. 26(a)(2)(B) an Local Rule CV-26.

d. for all other experts, the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them or documents reflecting such information; and

e. any party shall be excused from furnishing an expert report of treating physicians.

2. **Protective Orders.** The parties believe a HIPAA-Qualified Protective Order is necessary and will be submitting such an order in due course.

3. **Additional Disclosures.** Each party, within seventy-five (75) days after the Scheduling Conference and without awaiting a discovery request, shall provide, to the extent not already provided, to every other party the following:

(a) a copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action. By written agreement of all parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials;

(b) a complete computation of any category of damages claimed by any party to the action, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(c) those documents and authorizations described in Local Rule CV-34.

4. **Discovery Limitations**. Discovery is limited to the disclosures described in Paragraphs 1 and 3 together with **25 interrogatories, 35 requests for admissions**, the depositions of the parties, depositions on written questions of custodians of business records for third parties,

and **up to three (3) expert witnesses per side.** The parties disagree as to the number of additional hours for non-party depositions are needed. Plaintiff submits that thirty (30) additional hours for non-party depositions are needed per side. Defendants submit that ten (10) additional hours of non-party depositions are needed per side. The Court hereby orders that there shall be up to [**thirty (30) / ten (10)**] additional hours of non-party depositions per side. "Side" means a party or a group of parties with a common interest. Any party may move to modify these limitations for good cause.

5. **Privileged Information**. There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Scheduling Conference. Within one hundred ten (110) days after the Scheduling Conference, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege shall then file with the Court within thirty (30) days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection. If the parties have no disputes concerning privileged documents or information, then the parties shall inform the Court of that fact within one hundred ten (110) days after the Scheduling Conference.

6. **Pre-trial disclosures**. Each party shall provide to every other party regarding the evidence that the disclosing party may present at trial as follows:

(a) The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to present at trial and those whom the party may call if the need arises.

(b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.

(c) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

These disclosures shall be made at least thirty (30) days before trial, unless a different time is specified in the Docket Control Order or the Court. Within fourteen (14) days thereafter, unless a different time is specified in the Docket Control Order or the Court, a party may serve and file a list disclosing (1) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (2) any objections, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown.

7. **Signature.** The disclosures required by this order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it

is made. If feasible, counsel shall meet to exchange disclosures required by this order; otherwise, such disclosures shall be served as provided by Fed. R. Civ. P. 5. The parties shall promptly file a notice with the Court that the disclosures required under this order have taken place.

8. **Duty to Supplement**. After disclosure is made pursuant to this order, each party is under a duty to supplement or correct its disclosures immediately if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

9. **Disputes.**

(a) Except in cases involving claims of privilege, any party entitled to receive disclosures may, after the deadline for making disclosures, serve upon a party required to make disclosures a written statement, in letter form or otherwise, of any reason why the party entitled to receive disclosures believes that the disclosures are insufficient. The written statement shall list, by category, the items the party entitled to receive disclosures contends should be produced. The parties shall promptly meet and confer. If the parties are unable to resolve their dispute, then the party required to make disclosures shall, within fourteen (14) days after service of the written statement upon it, serve upon the party entitled to receive disclosures a written statement, in letter form or otherwise, which identifies (1) the requested items that will be disclosed, if any, and (2) the reasons why any requested items will not be disclosed. The party entitled to receive disclosures may thereafter file a motion to compel.

(b) In addition to the requirements of Local Rule CV-7(h) and (i), within 72 hours of the

Court setting any discovery motion for a hearing, each party's lead attorney (*see* Local Rule CV-11(a)) and local counsel shall meet and confer in person or by telephone, without the involvement or participation of other attorneys, in an effort to resolve the dispute without Court intervention. Counsel shall promptly notify the Court of the results of that meeting by filing a joint report of no more than 2 pages. Unless excused by the Court, each party's lead attorney shall attend any discovery motion hearing set by the Court (though the lead attorney is not required to argue the motion).

(c) Counsel are directed to contact the Discovery Hotline provided by Local Rule CV-26(e) for any "hot-line" disputes.

10. **No Excuses.** A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue.

11. **Filings.** Unless specifically directed by the Docket Control Order or requested from chambers, courtesy copies do not need to be provided to chambers.

12. **Standing Orders**. The parties and counsel are charged with notice of and are required to fully comply with each of the Standing Orders of the undersigned as well as the Standing Orders of the assigned District Court Judge, if any. Such orders are posted on the website of the corresponding Judge(s). All such standing orders shall be binding on the parties and counsel, regardless of whether they are expressly included herein.

# EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

| HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY, *Plaintiff*, vs. NEUROMONITORING ASSOCIATES, LLC, PHYSICIAN OVERSIGHT, LLC, and MONITORING ASSOCIATES LLC, *Defendants*. | Case No. 5:26-cv-00022-RWS-JBB |
|---|---|

**[PROPOSED] DISCOVERY ORDER**[1]

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Fed. R. Civ. P. 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. **Disclosures.** Except as provided by paragraph 1(j), within thirty (30) days after the Scheduling Conference, each party shall disclose to every other party the following information:

 (a) the correct names of the parties to the lawsuit;

 (b) the name, address, and telephone number of any potential parties;

 (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);

 (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a

[1] Defendants join in and submit this Proposed Discovery Order, subject to and with full reservation, without any waiver, of all of their arguments in their pending Motions to Dismiss and Motion to Stay Discovery and related briefing and submissions.

brief, fair summary of the substance of the information known by any such person;

(e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;

(f) any settlement agreements relevant to the subject matter of this action;

(g) any statement of any party to the litigation, or if applicable, any witness statements described in TEX. R. CIV. P. 192.3(h); and

(h) for any testifying expert, by the date set by the court in the Docket Control Order, each party shall disclose to the other party or parties:

a. the expert's name, address, and telephone number;

b. the subject matter on which the expert will testify;

c. if the witness is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the disclosing party regularly involve giving expert testimony:

1. all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony, except to the extent protected by Fed. R. Civ. P. 26(b)(4); and

2. the disclosures required by Fed. R. Civ. P. 26(a)(2)(B) an Local Rule CV-26.

d. for all other experts, the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them or documents reflecting such information; and

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in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

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e. any party shall be excused from furnishing an expert report of treating physicians.

2. **Protective Orders.** The parties believe a HIPAA-Qualified Protective Order is necessary and will be submitting such an order in due course.

3. **Additional Disclosures.** Each party, within seventy-five (75) days after the Scheduling Conference and without awaiting a discovery request, shall provide, to the extent not already provided, to every other party the following:

(a) a copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action. By written agreement of all parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials;

(b) a complete computation of any category of damages claimed by any party to the action, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(c) those documents and authorizations described in Local Rule CV-34.

4. **Discovery Limitations**. Discovery is limited to the disclosures described in Paragraphs 1 and 3 together with **25 interrogatories, 35 requests for admissions**, the depositions of the parties, depositions on written questions of custodians of business records for third parties,

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and up to three (3) **expert witnesses per side**. The parties disagree as to the number of additional hours for non-party depositions are needed. Plaintiff submits that thirty (30) additional hours for non-party depositions are needed per side. Defendants submit that ten (10) additional hours of non-party depositions are needed per side. The Court hereby orders that there shall be up to [**thirty (30) / ten (10)**] additional hours of non-party depositions per side. "Side" means a party or a group of parties with a common interest. Any party may move to modify these limitations for good cause.

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5. **Privileged Information**. There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Scheduling Conference. Within one hundred ten (110) days after the Scheduling Conference, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege shall then file with the Court within thirty (30) days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection. If the parties have no disputes concerning privileged documents or information, then the parties shall inform the Court of that fact within one hundred ten (110) days after the Scheduling Conference.

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6. **Pre-trial disclosures**. Each party shall provide to every other party regarding the evidence that the disclosing party may present at trial as follows:

   (a) The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to present at trial and those whom the party may call if the need arises.

   (b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.

   (c) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

   These disclosures shall be made at least thirty (30) days before trial, unless a different time is specified in the Docket Control Order or the Court. Within fourteen (14) days thereafter, unless a different time is specified in the Docket Control Order or the Court, a party may serve and file a list disclosing (1) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (2) any objections, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown.

7. **Signature.** The disclosures required by this order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it

is made. If feasible, counsel shall meet to exchange disclosures required by this order; otherwise, such disclosures shall be served as provided by Fed. R. Civ. P. 5. The parties shall promptly file a notice with the Court that the disclosures required under this order have taken place.

8. **Duty to Supplement**. After disclosure is made pursuant to this order, each party is under a duty to supplement or correct its disclosures immediately if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

9. **Disputes.**

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