

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-MD-02994-RAR

In re:

**MEDNAX SERVICES, INC.,
CUSTOMER DATA SECURITY BREACH LITIGATION**

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This Document Relates to All Actions

STIPULATED DEPOSITION PROTOCOL ORDER

The Court recognizes that a fundamental purpose of multidistrict litigation under 28 U.S.C. § 1407 is to facilitate the conduct of efficient and non-duplicative discovery relating to questions of fact common to transferred and coordinated actions. The parties have agreed to be bound by the terms of this Deposition Protocol in this action.

I. SCOPE

1. This Deposition Protocol is intended to conserve judicial and party resources, serve the convenience of the parties and witnesses, promote public health, and promote the just and efficient conduct of this litigation. This Deposition Protocol and its limitations apply to all depositions in this litigation, including depositions of non-parties.

2. The procedures and protocols outlined below govern any deposition in the above-captioned matter, including any deposition conducted via internet video conference technology. For purposes of this Deposition Protocol, the term “Remote Deposition” shall refer to any deposition where the witness and one or more questioning or defending attorneys are in different physical locations at the time of the deposition, and the term “In-Person Deposition” shall refer to any deposition where the witness, questioning attorneys, and defending attorneys are in the same physical location.

3. Any deposition may be noticed to be conducted as a Remote Deposition or an In-Person Deposition at the initial discretion of the noticing party, subject to Paragraph 4 below.

4. Any In-Person Deposition must give due account to applicable health directives in effect at the time and place of the deposition, health recommendations and individual medical advice affecting participants, and the personal comfort level of the witness, which shall take precedence over other considerations. No person shall be required to violate or disregard applicable health directives, recommendations, or the advice of his or her physician. All participants attending a deposition in person shall honor reasonable requests to wear masks, maintain distance, and otherwise adhere to health and safety protocols. For In-Person Depositions, all counsel of record are entitled, but not required, to attend the deposition in person. Counsel of record may also elect to attend In-Person Depositions remotely. Notwithstanding the foregoing, in no event shall the witness be required or be allowed to respond to questions while wearing a mask.

5. All depositions will use a court reporting service, remote deposition platform, and videoconference technology to host and record the deposition (“Deposition Vendor”). A remote deposition platform and videoconference technology are not required for In-Person Depositions if counsel of record for all parties agree for any particular deposition that such technology is not required.

6. Unless specifically modified, nothing in this Deposition Protocol abrogates, modifies, or adjusts the Federal Rules of Civil Procedure, Local Rules, or any orders of the Court governing depositions, including but not limited to the Stipulated Protective Order [ECF No. 55].

7. A copy of this Deposition Protocol shall be attached to each third-party subpoena requesting deposition testimony.

II. ATTENDANCE AND LOCATION

8. Unless otherwise ordered or agreed by the parties, pursuant to Federal Rule of Civil Procedure 26(c) and subject to the terms of the Stipulated Protective Order [ECF No. 55], only the following individuals may attend depositions: counsel of record, including attorneys and employees of their law firms; parties or in-house attorneys of a party; court reporters; videographers; the deponent; and counsel for the deponent. An expert or non-testifying consultant for a party may attend if the party employing that expert or non-testifying consultant provides: (a) advance notice of their attendance; and (b) confirmation that the expert or non-testifying consultant has signed the Certification confirming adherence to the Stipulated Protective Order [ECF No. 55]. Any party that objects to the attendance of such expert or non-testifying consultant may seek relief from the Court in advance of the deposition. Under no circumstances shall a person attend any part of a deposition in person, or by any remote means such as telephone, internet link-up, videoconference, or any other kind of remote-access communication, without being identified on the record. As used herein, the term “Deposition Participants” means all persons attending a deposition.

9. A witness has a presumptive right to receive, in person, the confidential advice and assistance of counsel in preparing for the deposition and the right for counsel defending the deposition to be present in person during the deposition. Nothing in this Deposition Protocol shall modify or abridge that right in any way, nor does this Deposition Protocol modify or abridge the right of any party taking a deposition to do so in person if it prefers to do so (subject to Paragraph 4). The noticing party’s choice to participate in a deposition remotely does not prevent the defending counsel from defending the deposition in person.

10. At least **five (5) days** before a deposition, defending counsel shall provide all counsel of record with notice of the names and email addresses of any participants who defending

counsel reasonably expects will be present in person with the witness and who defending counsel reasonably expects will be present remotely.

11. If any individual(s) will be present in person with the witness during a Remote Deposition, other counsel of record is also entitled, but not required, to attend the Remote Deposition in person.

12. If any individual(s) will be present in person with the witness during a Remote Deposition, the parties agree that the court reporter and one or more employees of the Deposition Vendor may attend the deposition in person to stenographically record the deposition testimony, video record the deposition, troubleshoot any technological issues that may arise, and administer virtual breakout rooms.

13. At least **three (3) days** before a deposition, the noticing party shall provide to the Deposition Vendor the names and email addresses of the Deposition Participants that they reasonably expect to attend the deposition. The parties understand that the Deposition Vendor might not be able to accommodate changes to the list of participants received fewer than **thirty-six (36) hours** before a deposition.

14. The witness, counsel for the witness and the parties, and the court reporter and videographer may be in separate locations during a Remote Deposition. This arrangement will not justify an objection to either the taking of the deposition or subsequent use by any party of the deposition testimony. For purposes of Federal Rule of Civil Procedure 30(c)(1), the videographer shall be considered to be acting in the presence of and under the direction of the court reporter even though the videographer may be in a different physical location from the court reporter.

III. RECORDING OF REMOTE DEPOSITIONS

15. The court reporter will stenographically record all deposition testimony, including Remote Deposition testimony, and the court reporter's transcript will constitute the official record.

The court reporter may be given a copy of the video recording(s) of any Remote Deposition and may review the video recording(s) to improve the accuracy of any written transcript.

16. Any deposition may be noticed to be video recorded. The witness's counsel and the questioning counsel must be visible during the deposition (but not on the video recording) to all other participants, and their statements must be audible to all participants. The Deposition Vendor shall capture an audio record of on-the-record statements made by all individuals who attend the deposition. The party requesting the video deposition shall be responsible for all costs of recording the video.

17. The parties agree that Remote Depositions may be used at a trial or hearing to the same extent that an in-person deposition may be used at a trial or hearing. The parties will not assert that any testimony or video recording of such testimony during a Remote Deposition is inadmissible in any court or in connection with this action on the basis that the testimony was obtained through a Remote Deposition and will not object to another party's use or the introduction of any such content on that basis. Nothing in this Paragraph is intended to limit or waive any party's right to object to such testimony or any video recording of such testimony on any basis applicable to an In-Person Deposition. Except as provided in this paragraph, the parties reserve all objections to the use of any testimony or video recording of a deposition undertaken pursuant to this Deposition Protocol at trial.

IV. DEPOSITION PLATFORM

18. The Deposition Vendor will use security measures to ensure the confidentiality of the deposition, including video and audio feeds and exhibits. These security measures include using tools such as a "virtual waiting room"—which allows the court reporter to admit only individuals authorized to attend the deposition—and disabling the "record feature" for the witness and all Deposition Participants.

19. Any Deposition Participant may request that the Deposition Vendor arrange for virtual break-out rooms. Only those individuals identified by counsel to join a particular virtual break-out room will be permitted into that virtual break-out room. During breaks in the deposition, the parties may use the breakout room feature provided by the Deposition Vendor. Conversations in virtual break-out rooms will not be recorded.

20. Before any Remote Deposition, the witness may participate in training with the Deposition Vendor to familiarize themselves with the Deposition Vendor's remote deposition platform.

21. To the extent the Deposition Vendor's platform includes a "chat" feature or similar capabilities, the noticing party shall ensure that the host of the videoconference either: (a) disables the feature or (b) implements settings (if available) that require all communications to be seen by all Deposition Participants when the deposition is on the record.

22. For a Remote Deposition, every witness must make reasonable efforts to ensure that the witness: (a) has sufficient internet bandwidth to participate in the Remote Deposition; (b) has a computer or tablet with a webcam; and (c) has a microphone or telephone audio sufficient to appear for the Remote Deposition. Counsel for each witness must consult with the witness before the deposition to ensure that the deponent has the computer or tablet and microphone or telephone audio required for the Remote Deposition.

23. The parties agree to work collaboratively and in good faith with the Deposition Vendor as needed, and to meet and confer as needed, to assess each witness's technological abilities and to troubleshoot any issues before the deposition so any adjustments can be made.

24. For any deposition where notice was provided pursuant to Paragraph 13, at least **one (1) day** before a deposition, the Deposition Vendor shall send the link to join the deposition and dial-in information for the audio feed, as well as information to connect to a "realtime" feed,

if requested, to the noticed Deposition Participants. The Deposition Participants may not post the link, password(s), or dial-in information online or otherwise make the link, password(s), or dial-in information publicly available. Only Deposition Participants registered by the Deposition Vendor will be permitted to join the deposition remotely.

25. To ensure the confidentiality of the Remote Deposition, all Deposition Participants must connect to the remote deposition platform through a private, password-protected network.

V. DEPOSITION CONDUCT

26. Unless otherwise agreed by the parties and witness, or ordered by the Court, all depositions shall commence during regular business hours within the witness' local time zones.

27. At the time of a Remote Deposition, the witness must advise the court reporter of his or her physical location. The witness should endeavor to participate in the Remote Deposition from a quiet, well-lit, indoor location, while seated in front of a neutral background, and while facing the camera being used to record the witness. To avoid any potential disruptions of a Remote Deposition, those attending must enable "do not disturb" or similar settings for applications not in use, including but not limited to Skype, instant messaging, telephone calls, and/or e-mail notifications.

28. Any Deposition Participant may make reasonable requests for recesses as is customary in depositions, which will generally be granted as is customary in depositions.

29. For all depositions, oaths will be administered to the witness on the record at the start of the deposition or via an affidavit signed by the witness. Such an affidavit or swearing-in will satisfy Federal Rules of Civil Procedure 28 and 30(b)(5), and any remote swearing-in will have the same force and effect as if the oath had been administered in person and is deemed to be an ongoing and continuing obligation to provide testimony in a truthful, complete, and honest manner under the penalty of perjury.

30. Each party's counsel (and counsel for the witness, if applicable) must designate one attorney to be the primary speaker during the Remote Deposition (each a "Lead Counsel").

31. The questioning of witnesses within the control of a party shall proceed in the following sequence: (1) examination by the party that noticed the deposition; (2) examination by any other parties; (3) examination by counsel for the witness and/or the party or entity presenting the witness; (4) any re-examination by the parties in the same order as the original examination; and (5) any re-examination by counsel for the witness and/or the party or entity presenting the witness. The deposition examination shall be limited to **seven (7) hours** of total examination time, unless agreed otherwise by all parties or an order of the Court allows otherwise. Counsel shall make all reasonable efforts to avoid duplicative questioning.

32. Unless otherwise agreed or ordered by the Court, all depositions shall be limited to **one (1) day of seven (7) hours**.

33. The witness's counsel must comply with Federal Rule of Civil Procedure 30(c) and the Local Rules concerning objections at depositions. Counsel will refrain from engaging in colloquy during deposition to the extent possible. Any objection by a Defendant at a deposition shall be deemed to have been made on behalf of all other Defendants. Any objection by a Plaintiff shall be deemed to have been made on behalf of all other Plaintiffs. Nothing in this Order shall modify or abridge each party's right to make any permissible objection.

34. The witness, Lead Counsel, and any individual present in the same physical location as the witness (other than the Deposition Vendor's personnel) must keep their cameras on and remain visible when the Remote Deposition is on the record.

35. Unless instructed to do so by the Deposition Vendor, the witness will not put their videoconferencing window on mute or turn off their video camera when the Remote Deposition is on the record.

36. All Deposition Participants other than the witness, witness's counsel, Lead Counsel, and employees of the Deposition Vendor (as necessary) must set their audio on "mute" when the Remote Deposition is on the record and should unmute only as necessary for such participant to speak on the record.

37. All Deposition Participants other than the witness, witness's counsel, Lead Counsel, and employees of the Deposition Vendor (as necessary) may turn off their webcams when the Remote Deposition is on the record but should turn on their webcams as necessary for such participant to speak on the record.

38. During the on-the-record deposition examination, the witness must not engage in private communications with any person, including counsel or any other Deposition Participant, in any way that is not recorded in the same manner as the deposition itself (*i.e.*, no emails, text messages, or any other type of electronic or in-person communication).

39. The parties agree to use reasonable efforts to minimize technical disruptions during a deposition. If the witness, court reporter, videographer, or counsel for any party experiences any technical difficulties (*e.g.*, connection issues), the parties agree to suspend the deposition for a reasonable time until those difficulties are reasonably resolved. The fact of such technical difficulties, including malfunctions in visual or audio equipment, will be noted on the record as soon as the parties learn of their existence. The time during which the deposition is suspended will not count against the 7-hour time limitation or any other time limitation agreed to by the parties. A deposition will be suspended for no longer than **one (1) hour** total to attempt to resolve technical issues, unless the parties agree to an extension. If more time is needed to resolve technical issues, the deposition will continue by telephone, unless (i) the court reporter or videographer conveys that they are unable to effectively transcribe or record the deposition or (ii) the parties agree to make the witness available to complete the deposition on another day or at

another time. The parties do not waive their right to request more testimony for any other reason, nor do the parties waive any objections to any such request. Any portion of the deposition that has been transcribed while any Deposition Participant is absent or experiencing technical difficulties will be re-read upon the resolution of the technical difficulty upon request, and the affected party must be given an opportunity to object to any questions or answers that occurred in their absence.

40. Full and complete copies of deposition exhibits must be provided to the witness and counsel who are attending the deposition. Deposition exhibits may be made available in physical (hard copy) form or via remote deposition technology, file sharing software, or other electronic means. A witness may be required to use a keyboard, mouse, or other similar means to open and/or advance the pages of an exhibit. Access to a full copy of the deposition exhibit electronically via iPad, tablet, laptop, or other devices will be deemed to equate to hard copy access. The fact that a witness was provided with an electronic copy of an exhibit will be an insufficient basis to object to the admissibility of that exhibit at trial. During a Remote Deposition, the remote deposition technology must allow counsel to display and annotate exhibits for the witness, add and remove exhibits, and change the order in which the exhibits are presented to the witness. The attorney using the exhibit must give the witness and their counsel a reasonable amount of time to navigate the exhibit while the deposition is on the record.

VI. ERRATA SHEETS

41. Errata sheets from any deposition may be served electronically and, though they must bear the wet or electronic signature of the witness, may be verified in accordance with 28 U.S.C. § 1746.

VII. MODIFICATIONS OR DISPUTES

42. All parties will act in good faith to fulfill the letter and spirit of this Deposition Protocol.

43. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the Court in accordance with the procedure set forth in the Amended Fifth Scheduling Order [ECF No. 114]. If the Court is not available, and to the extent the parties are unable to resolve the dispute, the deposition shall continue as to matters not in dispute with full reservation of rights for a ruling at the earliest possible time.

44. The parties may modify this Deposition Protocol by mutual agreement. If a party determines that the provisions of this Deposition Protocol should be modified or vacated, the parties shall meet and confer. If the parties are unable to reach an agreement, either party may seek appropriate relief from the Court.

DONE AND ORDERED in Miami, Florida, this 5th day of February, 2023.

A handwritten signature in black ink, appearing to read 'Rodolfo A. Ruiz II', written over a horizontal line.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE